

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

75-7026

B

P/S

United States Court of Appeals

For the Second Circuit.

WILLIAM STEINMAN,

Appellant,

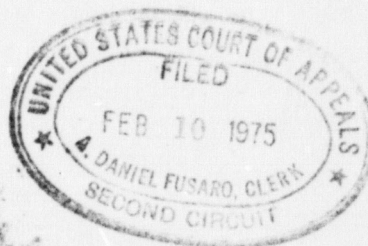
-against-

MAURICE H. NADJARI, individually and as Special
Deputy Attorney General of the State of New York,
Appellee.

*On Appeal From The United States District Court
For The Eastern District Of New York*

Appellant's Appendix

HERVEY and LEGUM
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AARON NUSSBAUM
Of Counsel.

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Photocopy of Court Order H-C

898

STEINMAN - vs. - MADJARI etc.

DATE	FILED - PROCEEDINGS	ADJUDICATED IN COURT REPORT	ADJUDICATED IN COURT REPORT
6-17-74	Complaint filed. Summons issued.	1	J85
6-25-74	Pltff's memorandum of law filed.	2	
6-26-74	By COSTANTINO, J. - Order to show cause dtd 6-17-74 for an order to enjoin a three judge court & for an injunction ret		
6-27-74	6-27-74 at 10 A.M. without proof of service filed.	3	
6-26-74	Notice of motion & memorandum of law to dismiss complaint ret		
6-27-74	6-27-74 at 10 A.M. filed.	4/5	
6-27-74	Before COSTANTINO, J. - Case called. Pltffs' order to show cause to enjoin & convene a 3 judge court argued. Decision re-		
	served. Motion to dismiss argued. Decision reserved.	---	
6/28/74	Reply Affidavit of Aaron Nussbaum filed.	6	
7-8-74	Stenographer's transcript filed.	7	
7-9-74	Reply affidavit of deft, Maurice H. Madjari filed.	8	
7-12-74	Affidavit of Aaron Nussbaum filed.	9	
7-17-74	Affidavit of Aaron Nussbaum (supplemental) filed.	10	
7/22/74	Affidavit of Joseph A. Phillips filed.	11	
8/1/74	Summons returned & filed/executed	12	
8-8-74	By COSTANTINO, J. - Memorandum & order dtd. 8-8-74 denying application for three judge court etc. filed. (p/c to attys)	13	
9-6-74	Notice of appeal filed. Duplicate mailed to C of A. In	14	
9/27/74	By COSTANTINO, J. - Order dated Sept. 25, 1974 filed that the time within which to transmit the record on appeal from the order of this court entered on Aug. 8, 1974 be and is extended for a period of 90 days from the date of filing of the notice of appeal, etc.	15	
10-1-74	Deft's supplemental brief in support of motion to dismiss filed.	16	
10-16-74	Pltff's reply brief and supplemental affidavit of Aaron Nussbaum filed.	17/18	
12-6-74	By COSTANTINO, J. - Memorandum and order dtd 12-6-74 denying pltff's request for declaratory & injunctive relief and granting deft's motion to dismiss complaint. Clerk to enter judgment dismissing complaint.	19	
12-10-74	By COSTANTINO, J. - Amended memorandum and order dtd 12-10-74 amending the concluding paragraph on page 9 of memorandum and order of 12-6-74 filed.	20	
12-13-74	JUDGMENT dtd 12-12-74 dismissing complaint filed. (p/c mailed to pltff).	21	

12-13-74 Notice of appeal
Clerk's certificate

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
WILLIAM STEINMAN,

Plaintiff,

-against-

MAURICE H. NADJARI, individually and as
Special Deputy Attorney General of
the State of New York,

Defendant.
-----x

COMPLAINT FOR
DECLARATORY JUDGMENT
AND PERMANENT
INJUNCTION.

Plaintiff, for his complaint herein, respectfully alleges:

Jurisdiction

1) This action is brought pursuant to Title 28 United States Code Section 2201, for a Declaratory Judgment under the Due Process Clause of the Fifth and Fourteenth Amendments of the Constitution of the United States, and Title 28 United States Code Section 1343, to redress the deprivation, under color of State law, of the rights, privileges and immunities secured and protected by the Constitution of the United States of all persons within the jurisdiction of the United States.

Parties

2) The defendant, MAURICE H. NADJARI, sued herein individually and as Special Deputy Attorney General of the State of New York was designated and appointed as such pursuant to Executive Order No. 55 issued September 19, 1972 by the Governor of the State of New York, and acting under the authorization of Article 1, Section 5 and Article 6, Section 27 of the Constitution of the State of New York, Section 63 of the Executive Law and Section 149 of the Judiciary Law of the State of New York.

3) The plaintiff herein, WILLIAM STEINMAN, is the individual named as defendant in a criminal proceeding instituted by the said MAURICE H. NADJARI as Special Deputy Attorney General of the State of New York, under an indictment entitled "The People of the State of New York v. William Steinman", filed in the Supreme Court of the State of New York, Extraordinary Special and Trial Term, County of Kings, on December 19, 1973, charging him with the crimes of Conspiracy in the Third Degree, Attempted Bribery in the Second Degree, and Grand Larceny in the Second Degree, in violation of the penal statutes of the State of New York.

Prosecutorial Misconduct Violative of
the Due Process Clause of the Constitution.

4) Under color of the penal statutes of the State of New York and Executive Order No. 55 as aforesaid, and as applied and enforced by the defendant MAURICE H. NADJARI, his agents and deputies, in the manner herein specifically set forth, the plaintiff WILLIAM STEINMAN herein was deprived of his rights, privileges and immunities secured and protected by the Constitution of the United States, and of his right to due process of law under the Fifth and Fourteenth Amendments of the Constitution of the United States, as follows:

(a) The defendant herein MAURICE H. NADJARI, his agents and deputies acting under his supervision, direction and control, and acting in concert with the Federal Strike Force of the United States Attorney for the Southern District of New York, unlawfully and wrongfully ensnared and entrapped the plaintiff, WILLIAM STEINMAN, into the commission of the alleged crimes charged against him, resulting in his arrest, indictment and pending prosecution therefor in the Supreme Court of the State of New York, County of Kings.

(b) The defendant herein MAURICE H. NADJARI, grossly abused his oath and authority in that he wilfully and wrongfully failed and refused to arraign the plaintiff, WILLIAM STEINMAN, in a Criminal Court following his arrest on September 25, 1973 without unnecessary delay as required by law as aforestated; and did wrongfully and wilfully deny to the plaintiff the due protection of the Court, and his right to counsel, and his right to a preliminary examination, and to the plaintiff's constitutional right of confrontation of the witnesses against him at a critical stage of the proceedings against this plaintiff.

(c) The defendant herein MAURICE H. NADJARI, his agents and deputies, acting in concert with various agents of the United States Attorney for the Southern District of New York and the Police Department of the City of New York, unlawfully held the plaintiff WILLIAM STEINMAN incommunicado from the date of his arrest, September 25, 1973 as aforestated, until approximately three months afterwards, for the specific purpose and design to attempt to coerce and intimidate the plaintiff herein to entrap and ensnare various public servants within the criminal justice system of Kings County, State of New York, including particularly any Justice of the Supreme Court of the State of New York, County of Kings, members of the District Attorney's Office of Kings County, and the United States Attorney's Office for the Eastern District of New York, into the commission of bribery, perjury and other related crimes; and the said defendant MAURICE H. NADJARI, his agents and deputies, acting in concert with other law enforcement officers as aforestated, did continuously threaten the plaintiff WILLIAM STEINMAN that if he did not "cooperate" as aforestated, he would be "immediately" fingerprinted, booked and arraigned in a Criminal Court in connection with his arrest as aforestated, and further would suffer the loss of his pension as Administrative

Assistant of the Comptroller's Office of the State of New York.

(d) The defendant MAURICE H. NADJARI, his agents and deputies, acting in concert with law enforcement officers as aforesaid, and in wilful defiance of the Court's plan admonition in United States v. Archer, 486 F 2d 670, against the continued practice by him of "Government-induced criminality", did nevertheless, continue to systematically engage in such practices against this plaintiff, WILLIAM STEINMAN, up to and including the date of his indictment, December 18, 1973.

(e) The defendant MAURICE H. NADJARI, did attempt to coerce the plaintiff, WILLIAM STEINMAN, to plant an electronic eavesdropping device or "bug" in the headquarters of the Democratic County Committee of Kings County, without authorization of law; and did further attempt to coerce the plaintiff, through informant Nicholas DiStefano, to ensnare and entrap certain named members of the Judiciary within the criminal justice system of Kings County, and a named Judge of the Surrogates Court, into the commission of criminal acts, and to entrap and ensnare a named Congressman into the commission of an act of bribery for the introduction of an Alien Bill into Congress; and did further attempt to force the plaintiff to entrap and ensnare a specifically designated Assistant District Attorney of Kings County to buy and pay for a Criminal Court Judgeship through a named political leader of Kings County.

(f) In pursuance of the defendant's plan and scheme to entrap innocent persons within the criminal justice system of Kings County into the commission of crimes as aforesaid, the defendant MAURICE H. NADJARI, his agents, deputies and others acting in concert with him, without any sanction or authority in law whatsoever, contrived and systematically employed the device of a mock arrest and

conviction of a Federal undercover agent to accomplish such purposes, and that in pursuance thereof the said defendant did suborn perjury of various witnesses in testifying perjurally in the Criminal Courts of the State of New York, and before the Grand Jury, and did further deceive the Supreme Court of the State of New York, County of Kings, with respect to the plea and sentencing proceedings in regard to the staged arrest and conviction of the Federal undercover agent aforesaid.

(g) The defendant MAURICE H. NADJARI, his agents and deputies, in concert with other law enforcement agents aforestated, did falsely and fraudulently represent to the United States Court of Appeals in a criminal proceeding entitled United States v. Archer, 486 F 2d 670, decided July 12, 1973, rehearing denied September 26, 1973, and again to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, in a criminal proceeding involving the requested dismissal of the indictment against this plaintiff on constitutional and statutory grounds, that the said manufactured device of a mock and staged arrest and conviction of a Federal undercover agent had been expressly authorized, sanctioned and approved by the Chief Judge of the Court of Appeals of the State of New York, whereas in truth and in fact, the said Chief Judge had never sanctioned or approved such practice, and had in fact explicitly disapproved the same and had in fact further so specifically informed the defendant, MAURICE H. NADJARI, through his agents and deputies, long prior to the date of the entrapment and arrest of this plaintiff as aforestated.

5) The defendant, MAURICE H. NADJARI, did wrongfully and wilfully contrive to deprive the plaintiff, WILLIAM STEINMAN, of his right to a fair and impartial trial, particularly as to

his right to assert the affirmative defense of entrapment, by prejudicially asserting and disseminating in a widely-reported news conference attended by the United States Attorney for the Southern District of New York, on December 19, 1973, that the plaintiff WILLIAM STEINMAN, had a criminal pre-disposition, whereas in truth and in fact, the plaintiff had no criminal pre-disposition of any kind and had never been involved in any act relating to bribery, larceny whatsoever; and again, the defendant MAURICE H. NADJARI, his agents and deputies, did, on successive dates thereafter, April 1st and April 2nd, 1974, seriously prejudice the defendant's rights to a fair and impartial trial by further publicity through the media regarding plaintiff's alleged criminal pre-disposition, directly violative of the Canons of professional responsibility promulgated by the American Bar Association in August 1969 dealing with "trial publicity", and directly violative of the order of the Appellate Division of the Second Judicial Department dated January 25, 1974, directing the sealing of all records pertaining to the criminal case pending against him; and violative of the plaintiff's rights to due process of law under the Fifth and Fourteenth Amendments of the Constitution.

6) By reason of the facts aforestated, the defendant MAURICE H. NADJARI, individually and as Deputy Attorney General of the State of New York, has so grossly abused his authority and jurisdiction under the color of the Governor's Executive Order No. 55 aforestated, that he, his agents and deputies, and all others acting in concert with him, have thrust themselves into direct violation of the penal statutes, both state and federal, as follows: Criminal Solicitation (Penal Law, Section 100.00); Coercion in the First Degree (Penal Law, Section 135.60); Conspiracy to Commit Bribery in the Third

Degree (Penal Law, Section 105.05); Attempted Eavesdropping. (Penal Law, Section 250.05); Official Misconduct (Penal Law, Section 195.00); Conspiracy to Commit Perjury in the First Degree (Penal Law, Section 210.15); Conspiracy to Commit Perjury in the Second Degree (Penal Law, Section 210.10); Criminal Impersonation (Penal Law, Section 190.25); Deprivation of rights under color of law (Title 18 United States Code Section 242); Conspiracy against rights of citizens (Title 18 United States Code Section 241), among others.

7) The prosecutorial misconduct of the defendant, MAURICE H. NADJARI, his agents and deputies and the law enforcement agents acting in concert with him, as aforesaid, under color of the penal statutes of the State of New York and Executive Order No. 55, is so shocking to the conscience, and offensive to the canons of decency, and so violative of principles of fundamental fairness and a universal sense of justice, that the Court should absolutely bar the said defendant, MAURICE H. NADJARI, from invoking judicial processes to prosecute the indictment obtained against this plaintiff, and to dismiss the indictment in the interests of justice, in order to protect the integrity of the administration of criminal justice, to preserve the purity of the Courts, and to protect the citizen, and particularly this plaintiff, from the lawless and unconscionable conduct of law enforcement officers.

8) The plaintiff, WILLIAM STEINMAN, has no adequate remedy to redress the deprivation of his constitutional rights, or to prevent the irreparable injury to him, except by way of an injunction, pursuant to Title 28 United States Code, Sections 2281 and 284, to stay the prosecution, and for a declaratory judgment to declare the indictment against him null and void under the Fifth and Fourteenth Amendments of

the Constitution.

Relief Requested

WHEREFORE, plaintiff prays that a three-Judge Constitutional Court be convened herein, to hear and determine this case;

To grant a declaratory judgment dismissing the indictment as null and void under the Due Process Clause of the Fifth and Fourteenth Amendments of the Constitution;

To issue a temporary restraining order, as provided in 28 United States Code 2284(3), staying the defendant, MAURICE H. NADJARI, his agents and deputies acting under or through his authority, from prosecuting the plaintiff until the final determination of the within action;

That plaintiff be given such other and further relief as to this Court may seem just and proper.

DATED: Brooklyn, New York,
June 10 1974.

/s/ HERVEY & LEGUM

HERVEY & LEGUM, ESQS.,
Office & P. O. Address,
16 Court Street,
Brooklyn, New York 11241

By */s/ AARON NUSSEBAUM*
AARON NUSSEBAUM, ESQ.,
Of Counsel.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
WILLIAM STEINMAN,

Plaintiff,

-against-

74-C-888
ORDER TO SHOW CAUSE

MAURICE H. NADJARI, individually and
as Special Deputy Attorney General
of the State of New York,

Defendant.
-----x

Upon the annexed affidavits of WILLIAM STEINMAN and
AARON NUSSBAUM, verified June 10, 1974, upon the complaint
herein and the exhibits annexed thereto, and upon all the
papers heretofore filed and all the proceedings heretofore had
herein,

And it appearing to the Court that ~~(1) the actions~~
~~heretofore undertaken by the defendant against the plaintiff~~
~~are subject to grave doubt as to their legality under the~~
~~Constitution and Laws of the United States, (2) such actions,~~
~~if pursued by the defendant, would result in irreparable injury~~
~~to the plaintiff, (3)~~ there are good and sufficient reasons to
bring on this motion by order to show cause, and (4) due notice
of the hearing on this order to show cause may be given to the
Governor and Attorney General of the State of New York,

Let the defendant MAURICE H. NADJARI, individually and
as Special Deputy Attorney General of the State of New York,
show cause before this Court at Room / , United States
Courthouse, 225 Cadman Plaza East, Brooklyn, New York at
10:00 A.M. on the 17th day of June, 1974, or as soon thereafter
as counsel can be heard, why an order should not be entered:

(1) Convening a District Court of three judges pursuant
to 28 U.S.C. Sec. 2281 for the hearing of this cause and of
the plaintiff's motion for an injunction, both preliminary and

permanent, and granting the plaintiff's request, hereby made, that the Chief Judge of the United States Court of Appeals for the Second Circuit be notified, pursuant to 28 U.S.C. Sec. 2294, of the presentation of this application for an injunction in order that the necessary designation of three judges for said court may be made;

HAC
4/10
~~(2) Restraining and enjoining the defendant, his agents,~~
servants, employees, attorneys, and all persons acting in concert with him from enforcing or attempting to enforce against the plaintiff the prosecution of an indictment filed in the Supreme Court of the State of New York, County of Kings, Extraordinary Special and Trial Term, entitled People of the State of New York v. William Steinman, Indictment No. S.P.O. K-6/1973, pending the hearing of the plaintiff's motion, hereby made, for an injunction, both preliminary and permanent, so restraining the defendant by a District Court of three judges, and a final determination of the plaintiff's action for a Declaratory Judge to declare the indictment null and void under ~~the Due Process Clause of the Constitution;~~

(3) Consolidating and advancing the hearing of the motion hereby made for injunctive relief with the trial on the merits of the action for a Declaratory Judgment herein; and it is

ORDERED, that personal service of this order to show cause and the papers on which it is based upon the Honorable MAURICE H. NADJARI, individually and as Special Deputy Attorney General, the defendant herein, at his office at 2 World Trade Center, New York, New York, on or before the *20th* day of June, 1974 at 5:00 P.M. shall constitute good and sufficient service of this order to show cause, and it is further

ORDERED that notice of the hearing on this order to show cause be given by mailing a copy thereof by registered mail to the Governor and the Attorney General of the State of New York at least five (5) days prior to June 27th 1974, the date of the hearing on this order to show cause; and it is further

ORDERED, that the defendant's opposing papers be served on the plaintiff's attorneys by June 27th 1974, at 5:00 P.M.

DATED: Brooklyn, New York, on
June 17 1974.

(s) MARK A. COSTANTINO
U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- -X

WILLIAM STEINMAN,

Plaintiff,

-against-

MAURICE H. NADJARI, individually and
as Special Deputy Attorney General
of the State of New York,

Defendant.

----- -X

STATE OF NEW YORK)
COUNTY OF KINGS) SS:

WILLIAM STEINMAN, being duly sworn, deposes and says:

I am the plaintiff in the within-entitled action.

On September 25, 1973, I was arrested by police officers
in front of the Supreme Court Building, in the Civic Center,
Brooklyn, New York.

From the day of my arrest, September 25, 1973, until
the day of my indictment on December 18, 1973, I was never
booked, fingerprinted or arraigned in any Court in connection
therewith.

Instead, during all that time, I was held incommunicado,
deprived of my right to a preliminary hearing, my right of
confrontation of the witnesses against me, my right to counsel,
and of my right to the protection of a Court or Judge, during
the critical stages of the proceeding against me.

I was continuously warned and threatened that unless
I "cooperated" with them, I would be "immediately" fingerprinted,
and booked, and would suffer the loss of my pension as
Administrative Assistant to the State Controller, after 40 years
of accrued civil service. I was specifically ordered not to
say anything to anybody concerning my arrest.

I had been entrapped into the commission of the alleged
crimes charged against me, for which I was arrested on
September 25, 1973 as aforesaid, through Mr. Nadjari's use

of an informant, one Nick DeStephano. I had first met Mr. DeStephano as a political helper back in 1965, but had hardly ever seen him since that time. It was Mr. DeStephano, acting as an informant and solely at the instigation of Mr. Nadjari and Mr. Giuliani of the federal strike force who entrapped me into the commission of the alleged crimes charged against me which led to my arrest and indictment.

In February 1973, he approached me to try to help a "friend" of his, one Virginia Morgan, with regard to a gun charge to which she had pleaded guilty in the Kings County Supreme Court. Virginia Morgan, I learned later, was the name used by a federal undercover agent to impersonate a non-existent criminal defendant, as part of the scheme used by Mr. Nadjari to entrap others into the commission of criminal acts through the informant Nick DeStephano.

The said informant Nick DeStephano is the same individual who had been used by Mr. Giuliani and Mr. Nadjari as an informant in the Archer case. (United States v. Archer, 482 F 2d 670, decided by the United States Court of Appeals on July 12, 1973).

Unbeknown to me at any time prior to my arrest, Mr. DeStephano had a long criminal record. He is the same individual involved as defendant in the case of United States v. De Stephano, 464 F 2d 845 (2d Circuit, 1972), on a charge of subornation of perjury, and conspiracy to suborn perjury in a narcotic case.

At no time prior to my meeting him on February 20, 1973, the date alleged in the indictment, did I ever solicit or receive any money from Mr. DeStephano, for political favor or otherwise, or for the purpose of a bribe or any illegal payment to anyone, at any time. I have never offered or paid a bribe to any public official or anyone else, at any time.

During the entire three-month ordeal of my interrogation, threat and intimidation, from the day of my arrest to the date of my indictment, I was shuttled back and forth between Mr. Nadjari's Office at the World Trade Center and the Office of Assistant United States Attorney Rudolph W. Giuliani, Southern District of New York, in the Federal Building at Foley Square.

The case against me had originated as a federal prosecution through the manufactured jurisdiction created by the use of a federal undercover agent, one Virginia Morgan, a resident of Maryland.

Following the federal decision in the Archer case by the United States Court of Appeals, however, condemning this practice of "manufactured" jurisdiction, Mr. Giuliani transferred my case to Mr. Nadjari who, continuously thereafter nevertheless acted in close concert with each other for approximately four months afterwards, up to the date of my indictment on December 18, 1973.

During this entire period of time from September 25, 1973 to December 3, 1973, both Mr. Nadjari and Mr. Giuliani, and their agents and deputies, attempted by threat, coercion and intimidation to have me booked and fingerprinted "immediately", unless I cooperated with them to "get" and "set up" various named Judges and other public officials within the criminal justice system of Kings County, into the commission of acts of bribery and related crimes.

I was told to "get" any secretary to a Supreme Court Judge, introduce Mr. De Stephano to him, who would then take over, and I would be completely out of it from then on.

I was repeatedly warned by Mr. Nadjari's office, led by Deputy Attorney General Mark Federman and Deputy Attorney General

Steven North, in charge of the Brooklyn office, in an interrogation lasting five hours on the day of my arrest, that I would get seven years in jail and suffer the loss of my pension rights if I don't cooperate in cleaning up "the dirty politics in Brooklyn". He warned me that I would be an old man over 70 when I would be released, and that I had better cooperate. Towards the end of the five hour interrogation, one of Mr. Nadjari's chief detective investigators, Don Kirby, placed two white fingerprint cards before me, and warned me that "if you don't cooperate, I'll fingerprint you right now."

Thereafter, from Mr. Nadjari's office in the World Trade Center, I was taken to the federal prosecutor's office where I met Rudolph R. Giuliani, an Assistant United Attorney for the Southern District of New York. During the following months of approximately eight or nine sessions of interrogation and threats on the part of Mr. Giuliani and his agents, I was directed to assist them in setting up "any" Supreme Court Judge through the informant DeStephano.

Mr. Giuliani showed me a list containing the names of approximately 20 to 25 Supreme Court Judges in Kings County. In addition to that wanted list, Mr. Giuliani said that he also wanted Judge Sobel. When I informed him that Judge Sobel was not a Supreme Court Judge but a Surrogate, Mr. Giuliani said: "We want him". Mr. Giuliani also mentioned the name of Judge Koota whose name did not appear on the list of Brooklyn Supreme Court Justices that he showed me, because Judge Koota had been then sitting in the Manhattan Narcotics Court, but Mr. Giuliani said also of Judge Koota: "We want him".

Also I was told by Mr. Giuliani that in addition to any judges, he "wanted" to know who the "crooked ones" were in the District Attorney's Office of Kings County and the United States Attorney's Office for the Eastern District of New York.

Mr. Giuliani also proposed that I "bug" the office of one Meade Esposito, presently the Democratic County Leader of Kings County, stating that I would be in a position to place a "bug" in Mr. Esposito's office and that Mr. Esposito was high on his "wanted list".

Mr. Giuliani wanted me also to "set up" Arthur Brascoe, the brother of Congressman Frank Brascoe, so that Congressman Brascoe would introduce a special alien bill in Washington and that he, Mr. Giuliani would supply me with the alien's name as soon as possible, for the purpose of entrapping Congressman Brascoe into receiving payment for the introduction of that bill.

In a subsequent conversation with Mr. Giuliani, I was told that I must "give" him, a judge, an assemblyman, a senator, a councilman and a congressman, in about a week.

Participating in these discussions were members of the New York Police Department, the Strike Force of the federal prosecutor's office and at various times, members of Mr. Nadjari's office who had been cooperating with each other throughout.

When I was originally interrogated in Mr. Nadjari's office by Mr. Federman, I was asked to contact one, Bernard Bloom, a district leader in Kings County, and Assistant District Attorney Philip Lagana of Kings County, and to make arrangements with these named individuals for Mr. Lagana to buy a Criminal Court judgeship by making payment through me to Mr. Bloom. Mr. Federman said to me that "as a starter" to get Meade Esposito and Frank Gilligan and that "he will clean up Kings County". In all of these attempts to entrap the individuals named by him and by Mr. Giuliani, I was to be outfitted with a recording device for the purpose of bugging all conversations that I was to have with them.

I told Mr. Federman that I had no knowledge of any criminal activity having to do with any of the individuals that

he had mentioned to me.

Sometime in October 1973, I met with Nick DeStephano at 140 Cedar Street, New York City. On that occasion, he said to me that I would take a "bus ride" if I did not produce a Supreme Court judge for them.

He pointedly said to me, in the presence and hearing of several federal agents and the arresting officers of the New York City Police Department, Inspector Hess, Liet. Ahrens and Sgt. Powers, in words as follows: "They got me. I got you. Now you get them."

About two weeks later, the said Nick DeStephano and the Federal agent requested me to communicate with one Bernard Schwartz, who was described as the "bag man" for Justice Aaron E. Koota. I was instructed where and how to communicate with the said Schwartz. I never knew or heard of that individual prior to this incident. I was told in this connection that they would bring a case before Judge Koota in the Narcotics Court in Manhattan in a very short time, and I was to give the said Bernard Schwartz money to put a fix in that case.

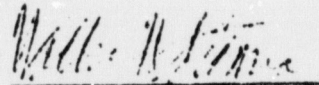
Notwithstanding the fact that I had never been involved in any crime of this nature or otherwise, both Mr. Nadjari and United States Attorney Paul J. Curran called a special news conference on the day of my arrest, September 25, 1973, and publicly announced through the press, radio and television that "confidential information had led his staff to believe that Mr. Steinman may have previously been involved in cases like this"; and further prejudicially insinuated that "if a person has a propensity for one kind of a criminal act then the entrapment defense falls." I am annexing hereto a copy of the New York Times article thereon dated December 20, 1973, marked Exhibit A.

Still again, Mr. Nadjari's Office added further prejudicial publicity to disparage my affirmative defense of entrapment on April 1, 1974 and again on April 2, 1974, per copies of news articles appearing in the Daily News on those successive dates, marked Exhibits B and C.


I respectfully call the Court's attention to the Code of Professional Responsibility, as promulgated by the American Bar Association in August 1969, and adopted by the New York State Bar Association as its own code of ethics, effective January 1, 1970 (McKinney's Judiciary Law, Book 29).

Both Mr. Nadjari and United States Attorney Curran flagrantly violated these Canons of Ethics, and seriously damaged my right to a fair and impartial trial.

All of the conversations I had had with the informant Nick Battaphano were electronically recorded, and the tapes thereof are now in the physical possession and control of Mr. Nadjari's office. Such tapes will absolutely confirm the truth of my statement to this Honorable Court, under oath, that I had been entrapped into the commission of the alleged crimes charged against me, at the instigation and direction of Mr. Giuliani and Mr. Nadjari, from the very inception of my first contact with the said informant.


WILLIAM STEINMAN

Sworn to before me this
10th day of June, 1974.


THERESA NUCIFORA
Notary Public, State of New York
No. 4444278 Queens County
Commission Expires March 26, 1976

Aide to Levitt Is Indicted in Bribery Case

By MARY BREASTED

An administrative assistant to the State Controller has been indicted on charges of attempted bribery, conspiracy and grand larceny.

Maurice H. Nadjari, the special state prosecutor investigating corruption in the criminal-justice system, announced the indictment yesterday at a news conference in his office at 2 World Trade Center. Mr. Nadjari said that the administrative assistant, William H. Steinman, had planned to arrange for lenient treatment of a criminal defendant in Brooklyn in exchange for \$10,000 in cash. Mr. Steinman intended to use part of the money to bribe public officials and to keep the rest, Mr. Nadjari said.

Virginia Morgan, the "defendant" whose case was the center of the alleged scheme, was in reality an undercover agent for the Federal Drug Enforcement Administration, Mr. Nadjari said.

Asked whether entrapment might be involved, Mr. Nadjari said that "if a person has a propensity for one kind of a criminal act, then the entrapment defense falls."

Federal Involvement

He said that "confidential information" had led his staff to believe that Mr. Steinman "may have previously been involved in cases like this."

United States Attorney Paul J. Curran, who also attended the news conference, said that the Drug Enforcement Administration had been "working on aspects of an investigation of the criminal-justice system" at the time the Nadjari investigation was started.

Both prosecutors said that the Virginia Morgan case had been devised to develop the case against Mr. Steinman and other possible participants in the alleged bribery scheme.

After Miss Morgan's "arrest" last Feb. 15 on gun possession charges, the Federal Government supplied the first \$1,000. Mr. Steinman is alleged to have demanded to help fix her case.

Mr. Nadjari said that agents of his office had paid an additional \$3,000 to Mr. Steinman. Mr. Curran said that eventually the case was turned over to the Special Prosecutor's office.

The indictment states that the \$3,000 cash allotment was handed over to Mr. Steinman "in a park in the vicinity of the Kings County Supreme Court House." It also states that Mr. Steinman told informants of the Special Prosecutor's office that he had spoken with three unnamed public officials in the criminal-justice system and two political district leaders in the course of his

Steinman Called Involved in Gaining Leniency for a Defendant

alleged attempts to fix Miss Morgan's case.

Court records show that Miss Morgan's case was before State Supreme Court Justice Irving P. Kartell. She pleaded guilty before him on Sept. 10 to a Class E felony. She had originally been charged with a more severe (Class D) gun-possession felony.

Miss Morgan was given a sentence of five years' probation on Oct. 23.

Sentence Recommended

An assistant to Justice Kartell, Nicholas Clemente, said yesterday that the probation report, usually the influential document in a sentencing procedure, had recommended such a sentence for Miss Morgan.

Both Mr. Clemente and Justice Kartell said yesterday that no one had contacted them in connection with the alleged bribery scheme.

Justice Kartell said that he had never heard of Mr. Steinman. And when asked whether his district leader, Gerald J. Beldock, Democratic leader of the 44th A.D. in Brooklyn, had spoken to him about the case, Justice Kartell said, "My district leader doesn't speak to me about any cases."

Mr. Beldock, reached by telephone yesterday after Mr. Steinman said he did know Mr. Steinman and

had spoken to him a number of times but that he "could not recall" any conversations about Miss Morgan's case.

Mr. Steinman, who is 65 years old, has been active in Brooklyn Democratic politics for many years and, according to Mr. Nadjari's office, he has worked for city and state government for more than 40 years.

He has been an assistant administrator to the State Controller for the last 15 years, serving as an office manager in the Controller's New York office. The job now pays \$24,000 a year.

State Controller Arthur Levitt issued a statement through a spokesman late yesterday calling the indictment of Mr. Steinman "very sad." Mr. Levitt noted that Mr. Steinman had worked under five different State Controllers as a career civil servant.

The indictment was handed up by a special grand jury in Brooklyn, and Mr. Steinman was booked yesterday at the First Precinct station in lower Manhattan. He later pleaded not guilty at his arraignment and was released without bail.

"I am entirely innocent. I am 100 per cent innocent," he told newsmen when he emerged from the booking procedures, making no further comment.

Mr. Nadjari said that the investigation of the alleged bribe scheme was continuing, but he declined to say what other persons might be targets of the investigation.

I Was Entrapped, Says Levitt Aide

By SAM ROBERTS

State Controller Arthur Levitt's administrative assistant, who was indicted last December on charges of having attempted to "fix" a gun case, now contends that he was "unlawfully entrapped."

The Levitt aide, William Steinman, makes the charge in court papers that, if truthful, provide a glimpse of the tactics and targets of anticorruption investigators for Special State Prosecutor Maurice Nadjari and the federal government.

Esposito Mentioned

Steinman, in the papers, says investigators proposed "that I 'bug' the office" of Brooklyn Democratic Chairman Meade Esposito. Steinman says Esposito was high on the investigators' "wanted list."

He says also that federal investigators sought to have him entrap Rep. Frank Brasco (D-Brooklyn) through Brasco's brother Arthur. The purpose, Steinman says, was to get Rep. Brasco to receive an illegal payment for the introduction in Congress of an immigration bill.

Also on the "wanted list," Steinman says, were Brooklyn Surrogate Nathan Sobel; Supreme Court Justice Aaron Koota; the Kings County Democratic Committee secretary, Frank Gilligan, and persons employed by the Brooklyn district attorney and the U.S. attorney for the Eastern District.

Steinman says Nadjari aides sought to wire him for an attempt to "induce" Philip Lagana—then an assistant Brooklyn district attorney and now president of the city's Tax Commission—to pass money to Steinman "for the purpose of (buying) a judgeship from Mr. Bernard Bloom," a Brooklyn Democratic leader.

Steinman says he, himself, was entrapped so that he would be forced to become an undercover agent. He says he was induced to

engage in a "fix" that he "would not otherwise be disposed to commit."

He quotes an undercover agent as having warned him that if he failed to produce a Supreme Court justice for prosecution, Steinman would take a "bus ride and get three years (in prison)."

The indictment against Steinman alleges conspiracy, attempted bribery and grand larceny. In the court papers, Steinman says he "contacted various people, and spoke to them, asking that" the defendant in the gun case—an undercover agent—"be given consideration and nothing more."

Nadjari charges that Steinman "specifically stated that he would have no problems in fixing the case" if it came before a Democratic judge.

The indictment says Steinman planned to "fix" the case by paying \$10,000 to a judge, two political leaders and an assistant Brooklyn district attorney. Steinman allegedly sought \$1,000 from the gun-case defendant last August, and allegedly said at the time: "The bastards are hungry."

Steinman says he intervened only because another alleged middleman—also an undercover agent—had given him "great assistance in political matters." Steinman denies ever having offered money to influence the disposition of the gun case.

Nadjari, in court papers of his own, says that Steinman, after his arrest, at first agreed to cooperate in an investigation of "the purchasing of judgeships." But then, the special prosecutor says, Steinman told investigators that he had been "advised not to continue cooperating because of his health, and also stated that he was not 'a rat.'"

Probe Levitt Aide On Mortgage Deal

By SAM ROBERTS

An alleged attempt by an aide to State Controller Arthur Levitt to "illegally influence public officials" to obtain a mortgage from the state's multibillion-dollar employees' retirement fund has been uncovered by investigators for the U.S. attorney and State Special Prosecutor Maurice Nadjari, it was learned yesterday.

The alleged attempt was laid to William Steinman, Levitt's former administrative assistant, who was indicted last December on separate charges of conspiracy, attempted bribery and grand larceny in a purported plot to fix a gun charge.

Learned Through Phone Tap

In a previously undisclosed court brief, the special prosecutor revealed that Steinman's phone was tapped late last summer, and the brief said, "Evidence derived from those interceptions provided further information about Steinman's corrupt

activities, including an attempt to illegally influence public officials within the office of the state controller for the purpose of obtaining a substantial mortgage on behalf of a New Jersey bank."

The mortgage sought was said to involve at least several hundred thousand dollars at favorable interest rates.

Levitt: No Such Lien

In an interview, Levitt denied yesterday that any such mortgage is in the portfolio of the retirement system. Levitt said the alleged attempt was "absolutely untrue" and declared unequivocally that Steinman "never had anything to do with mortgages."

The controller's latest report lists holdings of \$693 million in federally guaranteed mortgages and more than \$293 million in conventional mortgages.

Levitt said that as a matter of policy, all applications for mortgage loans are first screened by his staff and then must be approved by an independent committee.

A spokesman for the special



Arthur Levitt
Denies any link to office

prosecutor said there was no evidence that either the controller or any other member of his staff was involved.

The Steinman investigation was originally begun by U.S. Attorney Paul Curran's office. Then, last August, according to Nadjari's court papers, the U.S. attorney's office "became aware that the criminal activities of William Steinman fell more squarely within the jurisdiction of state law."

Because the federal government had greater jurisdiction in the alleged attempt to obtain a mortgage, however, that portion of the investigation was referred to the federal prosecutor by Nadjari's office. An investigation was begun but was said to have been thwarted after Steinman stopped cooperating with the investigators around the end of last year.

N.J. Daily Lottery Winner Monday: 00343

No prizes: \$2.50 if your ticket matches a winning number, 5275 if the five digits right but in reverse order. Also 5275 for the last four of the first four match. The fourth, middle or last three match. If all five digits are correct, but in scrambled order, \$2.50 if any two two digits match the winner.

6 Loosers appear today
on page 39.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
WILLIAM STEINMAN,

Plaintiff,

-against-

MAURICE H. NADJARI, individually and
as Special Deputy Attorney General
of the State of New York,

Defendant.
-----X

STATE OF NEW YORK)
COUNTY OF KINGS) ss:

AARON NUSSBAUM being duly sworn, deposes and says:

I am of counsel to Hervey & Lequm, Esqs., attorneys
for the within-named plaintiff, WILLIAM STEINMAN.

This affidavit is respectfully submitted in support of
the plaintiff's application for an injunction, and the convening
of a three-judge court, pursuant to Title 28 United States
Code Section 2281.

Simultaneously filed herewith is an action against
the defendant MAURICE H. NADJARI, for a Declaratory Judgment
pursuant to Title 28 United States Code Section 2201, under the
Due Process Clause of the Fifth and Fourteenth Amendments of
the Constitution of the United States, and Title 28 United States
Code Section 1343, to redress the deprivation, under color of
State law, of the rights, privileges and immunities secured and
protected by the Constitution of the United States of all persons
within the jurisdiction of the United States. A copy of the
Complaint is herewith annexed, marked Exhibit I.

The plaintiff WILLIAM STEINMAN was indicted on
December 18, 1973 by the Extraordinary Special Grand Jury of the
County of Kings in three counts, charging him with the crimes of
Conspiracy in the Third Degree, in violation of Penal Law,

Section 105.05, Attempted Bribery in the Second Degree, Penal Law Sections 110.00 and 200.00, and Grand Larceny in the Second Degree, Penal Law Section 155.35. A copy of the indictment is herewith annexed, marked Exhibit II.

The Color of Law

The indictment was procured by the defendant, MAURICE H. NADJARI, Special Deputy Attorney General of the State of New York designated by the Governor of the State of New York, pursuant to Executive Order No. 55 (Official Compilation, Codes Rules and Regulations of the State of New York, Title 9 Executive). The Governor's Executive Order No. 55 to the Attorney General of the State of New York reads as follows:

"1.55 Executive Order No. 55 (Placing Requirement on Attorney General in Relation to Certain Crimes Committed by Public Servants in the County of New York.

TO: THE HONORABLE LOUIS J. LEFKOWITZ
ATTORNEY GENERAL OF THE STATE OF NEW YORK
STATE CAPITOL
ALBANY, NEW YORK

I. Pursuant to Article IV Section three of the Constitution of the State of New York, the provisions of subdivision two of section 63 of the Executive Law and the statutes and law in such case made and provided, and in view of the recommendation of the Commission to Investigate Allegations of Police Corruption in the City of New York, I hereby require that you, the Attorney General of this State, attend in person, or by one or more of your assistants or deputies, an Extraordinary Special and Trial Term of the Supreme Court to be appointed by me to be held in and for the County of Kings at the County Court House and any other term or terms of the Supreme Court in and for the County of Kings and that you, in person or by said assistants or deputies, appear before the grand jury drawn for said extraordinary term of said court, and before any grand jury or grand juries which shall be drawn or which shall have heretofore been drawn for any other term or terms of said court, for the purpose of managing and conducting in said court and before said grand jury and said other grand juries any and all proceedings, examinations and inquiries and any and all criminal actions and proceedings which may be had or taken by or before said grand jury and grand juries concerning or relating to:

(a) any and all corrupt acts and omissions by a public servant or former public servant occurring heretofore or hereafter in the County of Kings in violation of any provision of State or local law and arising out of, relating to or in any way connected with the enforcement of law or administration of criminal justice in the City of New York;

(b) any and all acts and omissions and alleged acts and omissions by any person occurring heretofore or hereafter in the County of Kings in violation of any provision of State or local law and arising out of, relating to or in any way connected with corrupt acts or omissions by a public servant or former public servant arising out of, relating to or in any way connected with the enforcement of law or administration of criminal justice in the City of New York;

(c) any and all acts and omissions and alleged acts and omissions occurring heretofore or hereafter to obstruct, hinder or interfere with any inquiry, prosecution, trial or judgment pursuant to or connected with this requirement;

and that you conduct, manage, prosecute and handle such other proper actions and proceedings relating thereto as may come before said court and that you conduct, manage, prosecute and handle all trials at said extraordinary term of court or at any term of said court at which any and all indictments which may be found and which may hereafter be tried, pursuant to or in connection with this requirement, and in the event of any appeal or appeals or other proceedings connected therewith, to manage, prosecute, conduct and handle the same; and that in person or by your assistants or deputies you, as of the date hereof, supersede and in the place and stead of the District Attorney of the County of Kings exercise all the powers and perform all the duties conferred upon you by the statutes and law in such case made and provided and this requirement made hereunder; and that in such proceedings and actions the District Attorney of the County of Kings shall exercise only such powers and perform such duties as are required of him by you or your assistants or deputies so attending.

II. Pursuant to subdivision 8 of section 63 of the Executive Law, I also find it to be in the public interest to require that you inquire into matters concerning the public peace, public safety and public justice with respect to the subjects which are within the scope of this requirement, and I so direct you to do so in person or by your assistant or deputies and to have the powers and duties specified in such subdivision 8 for the purposes of this requirement."

The trial of the indictment and all preliminary proceedings relating thereto are now pending before the Hon. John ^{M.} Murtagh, Justice of the Supreme Court, appointed by the Governor of the State of New York, under the authorization

of Article 6 Section 27 of the New York State Constitution,
providing as follows:

"Article 6, Section 27 New York State Court.

Sec. 27. Extraordinary terms of the Supreme Court.

The Governor may, when in his opinion the public interest requires, appoint extraordinary terms of the Supreme Court. He shall designate the time and place of holding the term and the justice who shall hold the term. The Governor may terminate the assignment of the justice and may name another justice in his place to hold the term."

In implementation thereof, Section 149, subd. 2 of the Judiciary Law of the State of New York, provides as follows:

"Section 149. Governor may appoint extraordinary terms and name justices to hold them

1. * * *

2. A motion involving a matter pending before such extraordinary special or trial term shall be made returnable at such term, except that, in the exercise of discretion, a justice of the appellate division of the supreme court in the department in which such extraordinary special or trial term is being held may grant permission for such motion to be heard at a term of such appellate division."

The Proceedings in the State Court

In pursuance therewith, the Honorable J. Irwin Shapiro, Associate Justice of the Appellate Division of the Supreme Court, Second Judicial Department, duly granted an order on January 25, 1974 authorizing the said WILLIAM STEINMAN, plaintiff herein, to bring the following preliminary motions, among others, directly before a term of the Appellate Division:

1) For an order pursuant to Section 210.20 of the Criminal Procedure Law dismissing the indictment in the furtherance of and in the interest of justice.

2) For an order pursuant to Section 210.20 subdivision 1(h) of the Criminal Procedure Law dismissing the indictment on the specific ground that the Special Deputy Attorney General had grossly abused and violated the jurisdictional scope of his statutory power and authority vested in him through Article VI, Section 27 of the Constitution of the State of New York, Section 63 of the Executive Law and Governor's Executive Order No. 58 dated September 19, 1972, and the due process clause of the Constitution.

3) For an order disqualifying Hon. John M. Murtagh, presiding justice of the Extraordinary Special and Trial Term from presiding at the trial of the action herein, if any, and staying the trial of this action until the appointment of another Justice in his place, or the designation of an additional Extraordinary and Special Trial Term by the Governor, pursuant to specific authorization contained in Article 6, Section 27 of the New York State Constitution and Section 140 of the Judiciary Law and the due process clause of the Constitution.

4) For an order superseding and disqualifying the said MAURICE H. NADJARI, Special Deputy Attorney General and any member of his staff from managing and conducting the further prosecution of the defendant herein, and for an order requesting the Governor and/or the Attorney General of the State of New York to supersede the said MAURICE H. NADJARI as Special Prosecutor herein.

5) For an order granting discovery to the defendant, pursuant to Section 240.20 and Section 240.40 of the Criminal Procedure Law.

6) For an order, forthwith, directing the impounding by the Clerk of the Appellate Division, of all original tapes of electronic recordings and all intercepted telephone recordings, and all official reports based thereon, all written reports, statements and memoranda of interviews between the defendant and any member of the Office of the Special Deputy Attorney General

MAURICE H. NADJARI, and with all persons acting under his direction or in cooperation with him, including specified participating members of the Internal Affairs Division of the New York City Police Department and the specified participating members of the U. S. District Attorney of the Southern District of New York, pending the further order of the Appellate Division.

7) For such other and further relief as to the Appellate Division may seem just and proper.

The plaintiff's motion to dismiss the indictment, in the furtherance of and in the interests of justice, was expressly predicated upon the Fifth and Fourteenth Amendments of the Constitution of the United States, and also upon the specific statutory authorization therefor granted by New York Criminal Procedure Law, Section 210.20, subd. 1, and Section 210.40, which inter alia, set forth as follows:

Section 210.20, subd. 1(1) of the Criminal Procedure Law provides that an indictment may be dismissed upon motion of a defendant where "dismissal is required in the interest of justice, pursuant to Section 210.40."

Section 210.40 of the Criminal Procedure Law provides as follows:

"1. An indictment or any count thereof may be dismissed in furtherance of justice, as provided in paragraph (1) of subdivision one of section 210.20, when, even though there may be no basis for dismissal as a matter of law upon any ground specified in paragraphs (a) through (h) of said subdivision one of section 210.20, such dismissal is required as a matter of judicial discretion by the existence of some compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant upon such indictment or count would constitute or result in injustice.

2. An order dismissing an indictment in the interest of justice may be issued upon motion of the people or of the court itself as well as upon that of the defendant. Upon issuing such an order, the court must set forth its reasons therefor upon the record."

In support of the said motion to dismiss the indictment, your deponent specifically set forth as follows:

" If the compelling facts herein presented are proven at a hearing on this motion, as prescribed by Section 210.45 of the Criminal Procedure Law, then this Court cannot but dismiss the indictment in the overall furtherance of justice, in order to preserve and protect the integrity of the judicial process and the administration of criminal justice.

Entrapment, in any case, deeply offends "the highest public policy in the maintenance of the integrity of administration...It is abhorrent to the sense of justice", declared Chief Justice Charles Evans Hughes , writing for the Court in SORRELLS v. UNITED STATES, 287 US 435, 446-8.

Further, said Mr. Justice Hughes:

"...such an application (entrapment) is so shocking to the sense of justice that it has been urged that it is the duty of the Court to stop the prosecution in the interest of the Government itself, to protect it from the illegal conduct of its officers and to preserve the purity of its courts."

Further, the affidavit stated; and here re-asserted, as follows:

" The broad deterrent purpose of the judicially-designed exclusionary rules is "to deter future unlawful police conduct". (UNITED STATES v. CALANDRA, U.S. ___, Jan. 8, 1974, 14 CrL 3061); WEEKS v. US, 232 US 383; MAPP v. OHIO, 367 US 643. "The rule is calculated to prevent, not to repair. Its purpose is to deter---to compel respect for the constitutional guaranty in the only effectively available way---by removing the incentive to disregard it." (ELKINS v. UNITED STATES, 364 US 206, 217 (1960).

Enormously compounding the grave prosecutorial misconduct at bar is the remarkably peculiar circumstance that the very same principals directly involved, Assistant United States Attorney Rudolph W. Giuliani and Maurice H. Nadjari, Deputy Attorney General, had been solemnly forewarned by the United States Court of Appeals to desist from further prosecution by entrapment and through the device of

"manufactured" jurisdiction, in its decision in UNITED STATES v. ARCHER, 486 F. 2d 670, decided July 12, 1973, rehearing denied September 26, 1973.

Coincidentally enough, the very same ploy of a staged arrest of a federal undercover agent, as at bar, had been used to entrap the defendant ARCHER and two others. Even more poignant, the very same Nicholas DeStephano who had entrapped the defendant at bar, had been likewise deployed in the Archer case in a similar capacity.

In its opinion dismissing the indictment on jurisdictional grounds, the Archer Court forthrightly stated, in terms identically applicable at bar:

"We do not at all share the Government's pride in its achievement of causing the bribery of a state assistant district attorney by a scheme which involved lying to New York police officers and perjury before New York judges and grand jurors; to our minds the participants' attempt to set up a federal crime for which these defendants stand convicted went beyond any prosecutorial role and needlessly injected the Federal government into a matter of state concern."

As to the entrapment issue, the Court pointedly added:

"...Our intuition inclines us to the belief that this case would call for application of Mr. Justice Brandeis' observation in OLMSTEAD. Even though that view has not been incorporated in the entrapment defense, there is certainly a limit to allowing governmental involvement in crime. It would be unthinkable, for example, to permit government agents to instigate robberies and beatings merely to gather evidence to convict other members of a gang of hoodlums. Governmental 'investigation' involving participation in activities that result in injury to the rights of its citizens is a course that courts should be extremely reluctant to sanction. Prosecutors and their agents naturally tend to assign great weight to the societal interest in apprehending and convicting criminals; the danger is that they will assign too little to the rights of citizens to be free from government-induced criminality." (underscoring ours).

* * * * *

"Since we conclude reversal to be required on another ground, we leave the resolution of this difficult question for another day. We hope, however, that the lesson of this case may obviate the necessity for such a decision on our part." (underscoring ours).

" We are constrained to call the Court's attention to the fact that though ARCHER has been decided on July 12, 1973, and rehearing denied on September 26, 1973, the entrapment of the defendant at bar persisted uninterruptedly throughout this entire period of time, and on into December 3, 1973. Undenially, the overt acts specified in the Indictment itself, numbers 6 to 10 inclusive, covered period in the months of August and September, 1973. And, as more fully appears in the annexed affidavit of the defendant WILLIAM STEINMAN, the attempted entrapment of sundry public servants by the Special Prosecutor herein, acting in active cooperation with Assistant U. S. Attorney Rudolph W. Giuliani, extended without stint or hinderance from the date of defendant's arrest on September 25, 1973 to December 3, 1973.

In RUSSELL v. UNITED STATES, supra, quoted by the ARCHER court at p. 676, Mr. Justice Rehnquist expressed the following caveat, 411 U.S. at p. 431, namely, that the Court might:

"some day be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction, cf. Rochin v. California, 342 US 165, 72 S.Ct. 205, 96 L. ed. 183 (1952)...."

We earnestly submit to the Court that the case at bar presents precisely such a situation."

In the separate motion to dismiss the indictment for abuse of jurisdiction, your deponent set forth to the Appellate Division further as follows: and specifically re-asserted at bar:

" The Special Deputy Attorney General Maurice H. Nadjari has grossly abused and violated the jurisdictional scope of his statutory power and authority vested in him through Section 63 of the Executive Law and the Governor's Executive Order No. 58 dated September 19, 1972.

The duty to investigate and prosecute "any and all corrupt acts and omissions by a public servant or former

public servant * * * relating to or in any way connected with the enforcement of law or administration of criminal justice in the City of New York", as specified in Executive Order 58 (Official Comp., Codes Rules and Regulations of the State of New York (Title 9 Executive)), does not by any means embrace the power to entrap this defendant, or any other, into the commission of corrupt acts by public servants.

Inarguably, the power and statutory authority to investigate and prosecute corrupt acts by a public servant cannot confer the power to create or induce the commission of corrupt acts through the illegal and unconscionable device of wholesale entrapment of innocent victims. The Special Prosecutor can no more clothe himself with jurisdiction to prosecute crimes which he himself had created into being, than can one "manufacture" Federal jurisdiction over a purely local crime by a phony interstate coloration. (UNITED STATES v. ARCHER, 486 F. 2d 670 (CA 2, 1973).

In the motion for a discovery aforesaid, the plaintiff asserted to the Appellate Division as follows: and re-asserted at bar:

"If the facts set forth by the plaintiff are true, as we verily believe them to be, unless the tapes and reports conclusively prove otherwise, then the concerted action of the law enforcement agents in this case have enmeshed themselves in a host of crimes far more serious in nature than any with which the defendant (plaintiff herein) had been entrapped herein. Under these unique circumstances, the vital interests of justice require that all tapes and reports be forthcoming and impounded by this Court to insure their inviolability."

In the motion to disqualify and supersede the defendant, MAURICE H. NADJARI as Special Prosecutor herein, the affidavit

before the Appellate Division stated; and re-asserted at bar:

"We are constrained to state that this aggravated prosecutorial misconduct at the hands of the Special Prosecutor, atop the grave misconduct already demonstrated at bar, requires disqualification of Mr. Nadjari as the Special Prosecutor in this case.

The test prescribed by BERGER, supra, is here directly applicable:

"It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

On that test, the Special Prosecutor has totally disqualified himself as an impartial servant of the law, in this prosecution.

Accordingly, it is respectfully submitted that all further proceedings herein be stayed by this Court unless or until the Governor supersedes the said Maurice H. Nadjari and his staff as Special Prosecutor herein, in the interests of justice, and under the authority of Section 63, subd. 2 of the Executive Law, and the due process clause of the Constitution."

In the motion for an order disqualifying the Hon. Justice John M. Murtagh, and staying all proceedings pending designation of another Presiding Justice of the Extraordinary Special and Trial Term, deponent's supporting affidavit to the Appellate Division set forth as follows; and re-asserted at bar:

" With all due deference and respect for the Honorable John M. Murtagh, Justice Presiding at the Extraordinary Special and Trial Term, we respectfully submit to the Court that this defendant cannot reasonably receive a fair and impartial trial in the unique context of the facts and circumstances outlined in the companion motions hereinabove, and as hereinafter set forth.

"Both Mr. Justice Murtagh and the Special Prosecutor herein, Maurice H. Nadjari have been officially joined together by the single appointing authority of the Governor, in a sustained and continuing common objective of rooting out official corruption in the criminal justice system of Kings County, as well as in the other counties embraced within the City of New York, as contained in a series of the Governor's Executive Orders issued pursuant to Section 63 of the Executive Law and Section 149 of the Judiciary Law.

The extraordinary prosecutorial misconduct herein ascribed to the said Maurice H. Nadjari, upon which these motions are based, necessarily embrace, among others, the vital affirmative defense of entrapment. One of the critical rulings to be made by the trial court on that issue is the admissibility of relevant and material evidence by the defense tending to prove the precise motivation for the defendant's entrapment, and establishing that the prosecutor and police had intended to, and did use and deploy the defendant thus entrapped for the prime purpose of attempting to implicate other public servants into the commission of bribery and conspiracy, from the date of the defendant's initial arrest on September 25, 1973 until December 3, 1973, shortly before the filing of the indictment. Further, the admissibility of that same evidence would have an important bearing on the credibility of all witnesses from Mr. Nadjari's staff bearing centrally on the entrapment issue.

We earnestly submit that it would be imposing an awkward and embarrassing, if not impossible burden upon Mr. Justice Murtagh, to expect him to maintain an even balance of judicial objectivity in the unique volatile situation presented at bar.

"The disciplined judicial mind should not be subjected to any unnecessary strain; even the most austere intellect has a subconscious".

UNITED STATES v. WALKER, C.A., D.C.

F 2d,

Nov. 14, 1972.

" Wherefore, it is respectfully requested that the trial of this action, if any, be stayed until the appointment of another Justice presiding in his place, or until the designation of an additional Extraordinary Trial Term by the Governor, pursuant to the specific authorization contained in Art. 6, Sec. 27 of the New York State Constitution, Section 149 of the Judicial Law and the due process clause of the Constitution."

In a supplemental affidavit submitted to the Appellate Division, your deponent was constrained to state as follows; re-asserted at bar:

" Notwithstanding an order made by Mr. Justice J. Irwin Shapiro, Associate Justice of the Appellate Division dated January 28, 1974 directing the sealing of papers filed herein in the interests of justice, there appeared in the Night Edition of the New York Daily News on March 31, 1974--a daily newspaper of the widest circulation in the metropolitan area of New York--a prominent news article quoting from extracts from the People's Brief and Affidavits filed in opposition to the defendant's omnibus motions now pending before this Court. A second article in the same newspaper appeared on the succeeding day, April 2, 1974. Copies of these news stories are hereto annexed, marked Exs. A and B.

Your Affirmant respectfully submits that the deliberate unsealing of these filed papers by the prosecution in direct defiance of Court's order of January 28, 1974 further underscores the shocking prosecutorial misconduct displayed in the case at bar from its very inception, gravely imperilling the defendant's constitutional rights to a fair and impartial

trial as well as the sound administration of criminal justice.

" In this connection, your Affirmant further calls the Court's attention to the fact that this new spate of newspaper notoriety is of the same pattern as the severely prejudicial public statement adversely affecting the defendant, widely disseminated in the media of the press, television and radio, attendant the defendant's arrest following his indictment on December 19, 1973. A copy of that statement appearing in the New York Times of that date is hereunto annexed, marked Ex. C.

" The Code of Professional Responsibility was promulgated by the American Bar Association in August 1969, and adopted by the New York State Bar Association as its own code of ethics, effective January 1, 1970 (McKinney's Judiciary Law, Book 29).

Disciplinary Rule 7-107 of said Code specifically provides:

DR 7-107 Trial Publicity.

"A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.

* * * * *

(6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case."

Thereafter, following oral argument of the plaintiff's motions as aforesaid, your deponent submitted another supplementary affidavit to the Appellate Division on April 17, 1974, categorically refuting the representation made to the Appellate Division by Deputy Attorney General Joseph A. Phillips, Chief Assistant to the defendant, Nadjar, that the use of mock arrests

and pretended conviction of undercover Agents as a prosecutorial device--necessarily involving the systematic employment of suborned testimony before a Grand Jury, and deception of the Court--was with the "sanction and authorization" of Chief Judge Stanley H. Fuld. Contrarily, your deponent's affidavit to the Appellate Division categorically set forth as follows: and specifically represented at bar:

Your affiant now respectfully informs the Court that on April 18, 1974 I conferred with Judge Fuld and informed him of the statements and representations made by Mr. Phillips to this Court as aforesaid.

Judge Fuld informed me that he never sanctioned or approved the procedure of using undercover agents--who though ostensibly arrested and convicted, were innocent. (underscoring ours).

Judge Fuld also stated to me that he had been informed by a representative of Mr. Nadjari's office in April 1973, that they intended to utilize that device as a prosecutorial method of operation. Judge Fuld advised that representative that he would not tell a prosecutor what he could or could not do but that, in addition, he would not and could not sanction or approve such a tactic. (underscoring ours).

Judge Fuld further stated to your affiant that at no time did he ever specifically approve or authorize such prosecutorial tactic in this case."

Irreparable Injury to Plaintiff

On May 20, 1974, the Appellate Division rendered its decision, denying the plaintiff's various motions to dismiss the indictment on due process grounds for the prosecutorial misconduct of the defendant MAURICE H. NADJARI, to supersede and disqualify the defendant MAURICE H. NADJARI, to dismiss the indictment on jurisdictional grounds, to disqualify Judge Murtagh from presiding at the trial of the criminal proceeding against the plaintiff, and denying plaintiff's application to stay all proceedings pending the appointment of another presiding Justice

of the Extraordinary Special and Trial Term.

In adopting the concurring opinion of Mr. Justice Shapiro in Matter of Klein v. Murtagh, App.Div. 2d , decided therewith, the Court held:

"Shapiro, Acting P.J. (concurring). I concur in the carefully considered opinion of Mr. Justice Munder, but I should like to make it clear that in dismissing the petitions we have not reached or passed upon the petitioners' contention that the lawless conduct of the investigators in this case is so offensive to the administration of justice and to prevailing standards of decent behavior that this prosecution should be barred.

While I am in general agreement with the disapproval voiced by Judge Friendly in United States v. Archer (466 F. 2d 670) of the prosecutorial conduct of the Government (both State and Federal), the question of whether such conduct constituted government induced criminality (Sherman v. United States, 356 U. S. 369), or was otherwise of such a nature as to violate principles of fundamental fairness sufficient to preclude the prosecution of the petitioners (Rochin v. California, 342 U.S. 165), or whether the indictment should be dismissed in the interest of justice (CPL 210.40), should be decided at the trial level on a full record containing all the essential facts showing the manner in which the events leading to the prosecution of the petitioners were planned and carried out. The determination of these questions cannot properly be made on an application for an order in the nature of prohibition."

To relegate the plaintiff WILLIAM STEINMAN to the trial level before Judge Murtagh, in order to develop "all the essential facts showing the manner in which the events leading to the prosecution of the petitioners were planned and carried out" would be highly prejudicial to the plaintiff's constitutional right to a fair and impartial trial.

With all due deference and the highest respect for Judge Murtagh, it would be unreasonable to assume that the unavoidably built-in bias in favor of the Special Prosecutor inherent in the official association between Judge Murtagh and Mr. Nadjari in the joint execution of their common objectives under Executive Order No. 55, would permit Judge Murtagh to render a completely objective and impartial determination of the crucially sensitive issues surrounding the prosecutorial misconduct charged against

Mr. Nadjari, as set forth in the attached affidavit of the plaintiff WILLIAM STEINMAN herein.

— Included among these critical issues are (1) the plaintiff's motion to supersede and disqualify the defendant MAURICE H. NADJARI; (2) to dismiss the indictment for the extraordinary prosecutorial misconduct demonstrated at bar under the Due Process Clause of the Fifth and Fourteenth Amendments of the Constitution; (3) to dismiss the indictment for gross abuse of jurisdiction under color of law and Executive Order No. 55; and (4) to disqualify Judge Murtagh as Presiding Justice in the trial of the plaintiff herein. (See People v. Ryan, 7 App.Div. 2d 198 (Supreme Court, App.Div., Third Dept. 1958); Brocklyn Bar Association v. Kings County Bar Association, 258 App.Div. 920 (Supreme Court, App.Div. 2nd Dept., 1939); People v. Graydon, 59 Misc. 2d 330).

The order of the Appellate Division aforesated is non-appealable under the law of the State of New York.

The plaintiff WILLIAM STEINMAN has no other relief or remedy available to avoid irreparable injury to him, other than a permanent injunction of the state prosecution, pursuant to the authorization of 28 U.S.C. 2281, under the extraordinary circumstances presented at bar and the decisional law as set forth in the plaintiff's Memorandum of Law simultaneously filed herewith.

Prayer for Relief

Plaintiff further moves the Court, pursuant to Rule 65-a of the Federal Rules of Civil Procedure, that the trial of the action for Declaratory Judgment simultaneously filed herewith, be advanced and consolidated with the hearing of this motion for a three-judge Court and injunctive relief. The grounds for support of consolidation are that the injunctive relief herein sought, and the action for Declaratory Judgment

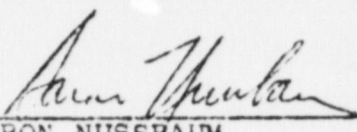
to declare the indictment null and void under the Due Process Clause of the Constitution, involve identical issues of law and fact and issues of Constitutional law. Repetition of evidence will be avoided, no delay in the disposition of the application for injunctive relief herein will result from consolidation, and the final disposition of the action will be expedited.

WHEREFORE, it is respectfully prayed that this Court grant an order:

(1) Convening a District Court of three judges pursuant to 28 U.S.C. Sec. 2281 for the hearing of this cause and of the plaintiff's motion for an injunction, both preliminary and permanent, and granting the plaintiff's request, hereby made, that the Chief Judge of the United States Court of Appeals for the Second Circuit be notified, pursuant to 28 U.S.C. Sec. 2284, of the presentation of this application for an injunction in order that the necessary designation of three judges for said court may be made;

(2) Restraining and enjoining the defendant, his agents, servants, employees, attorneys, and all persons acting in concert with him from enforcing or attempting to enforce against the plaintiff the prosecution of an indictment filed in the Supreme Court of the State of New York, County of Kings, Extraordinary Special and Trial Term, entitled The People of the State of New York v. William Steinman, Indictment No. S.P.O. K-6/1973, pending the hearing of the plaintiff's motion, hereby made, for an injunction, both preliminary and permanent, so restraining the defendants by a District Court of three judges, and a final determination of the plaintiff's action for a Declaratory Judgment to declare the indictment null and void under the Due Process Clause of the Constitution;

(3) Consolidating and advancing the hearing of the motion hereby made for injunctive relief with the trial on the merits of the action for a Declaratory Judgment herein.


AARON NUSSEBAUM

Sworn to before me this
10th day of June, 1974.

1st ARTHUR W. HERVEY
Notary Public, State of New York
No. 30 - 687565
Qual. in Nassau County
Comm. Exp. 3/30/75

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The defendant, in the County of Kings, from on or about February 26, 1973, to on or about September 25, 1973, with intent to engage in conduct constituting the crime of Bribery in the Second Degree did agree with others to engage in conduct and cause the performance of conduct constituting that crime.

It was the plan of the defendant and others that one or more bribes would be paid to public officials in the criminal justice system to influence the prosecution and court proceedings relating to the Virginia Moryn case.

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OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the conspirators committed and caused to be committed the following overt acts:

1. On or about February 20, 1973, the defendant met and conferred with another about the Morgan case.
2. On or about May 21, 1973, the defendant told another that he would contact a public official in the criminal justice system, who could affect the Morgan case.
3. On or about May 21, 1973, the defendant obtained a list of officials in the criminal justice system in Kings County.
4. On May 29, 1973, the defendant displayed to another a list of officials in the criminal justice system in Kings County.
5. On or about May 3, 1973, the defendant met and conferred with a public official in the criminal justice system in relation to the Virginia Morgan case.
6. On or about August 13, 1973, the defendant received \$1,000 in cash at Dubrow's restaurant.
7. On or about August 14, 1973, the defendant told another that he met and conferred with a second criminal justice system official.
8. On or about August 16, 1973, the defendant met with a third criminal justice official and discussed the Morgan case with him.
9. On or about September 6, 1973, the defendant told another that he met with two political district leaders with whom he discussed the Morgan case.
10. On or about September 20, 1973, the defendant received \$5,000 in cash in a park in the vicinity of the Kings County Supreme Court House.

SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, accuse the defendant of the crime of ATTEMPTED BRIBERY IN THE SECOND DEGREE, in violation of Sections 110.00 and 200.00 of the Penal Law committed as follows:

The defendant, in the County of Kings, from on or about February 26, 1973, to on or about September 25, 1973, did attempt to offer, agree to confer, and confer a benefit upon a public servant, upon an agreement and understanding that the public servant's opinion, judgment, action, decision, and exercise of discretion would be influenced.

To wit: the defendant attempted to offer and to confer money, property, and other benefits upon officials of the criminal justice system, with an understanding that their judgment, actions, and exercise of discretion in the prosecution and adjudication of the case of Virginia Morgan would thereby be influenced.

THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, accuse the defendant of the crime of GRAND LARCENY IN THE SECOND DEGREE, in violation of §155.35 of the Penal Law, committed as follows:

The defendant, in the County of Kings, from on or about February 26, 1973, to on or about September 25, 1973, did steal property which had a value in excess of one-thousand five-hundred dollars from another, to wit, six thousand dollars.

A TRUE BILL

MAURICE H. NADJARI
Deputy Attorney General

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----x
WILLIAM STEINMAN,

:
Plaintiff, :

-against-

: NOTICE OF MOTION

MAURICE H. NADJARI,
INDIVIDUALLY AND AS SPECIAL DEPUTY
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

:
Defendant. :
-----x

S I R S :

PLEASE TAKE NOTICE, that the undersigned
will move this Court at a Term for Motions to be held before the
Honorable MARK A. COSTANTINO, in Courtroom No. 1, at the United
States Courthouse, 225 Cadman Plaza East, Brooklyn, New York on
the 27th day of June, 1974, at 10:00 o'clock in the forenoon, or
as soon thereafter as counsel can be heard, for an Order dismissing
plaintiff's application for a temporary injunction and the conven-
ing of a three (3) Judge Court, and dismissing the complaint for
Declaratory Judgment and permanent injunction on the ground that
the plaintiff fails to state any claim against the defendant upon
which relief can be granted.

Dated: New York, New York
June 25, 1974.

Yours, etc.

M Maurice H NADJARI

MAURICE H. NADJARI
Special Deputy Attorney General
of the State of New York
Office & P.O. Address
2 World Trade Center
New York, New York 10047
(212) 466-1250

By: MELVIN M. DILDINE
Special Assistant Attorney General

TO:

AARON NUSSBAUM, ESQ.
Attorney for Plaintiff
Office & P. O. Address
16 Court Street
Brooklyn, New York 11241.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

AFFIDAVIT

WILLIAM STEINMAN,

Plaintiff, :

-against-

MAURICE H. NADJARI,
INDIVIDUALLY AND AS SPECIAL DEPUTY
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Defendant. :

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RUDOLPH W. GIULIANI, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney, Chief of the Narcotics Unit in the office of Paul J. Curran, United States Attorney for the Southern District of New York, and in that capacity I was assigned to an investigation involving William Steinman. This affidavit is being submitted on information and belief except where specifically stated that the facts and matters are based on my own knowledge.

2. This affidavit is being submitted in answer to a complaint for a declaratory judgment and injunctive relief filed by William Steinman in the above-captioned matter and specifically to correct various false statements and misrepresentations made by William Steinman in an affidavit dated June 10th, 1974.

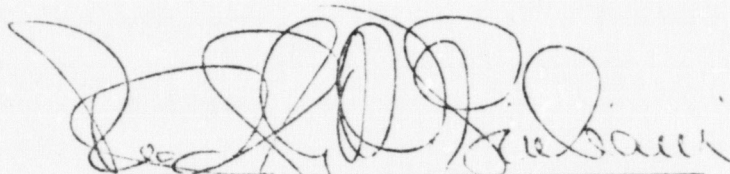
3. On three or four occasions during the fall of 1973 I met with the plaintiff William Steinman to discuss the possibility of his cooperating with the Federal Government in connection with an ongoing investigation of official corruption. Each meeting was attended by other Assistant United States Attorneys, Federal Agents, and members of the New York City Police Department. At no time did I or anyone else present at any of these meetings either threaten Mr. Steinman or ask Mr. Steinman to entrap any public officials, or for that matter, anyone else. Mr. Steinman, during his discussions with me, said that he had knowledge of corrupt

activity on the part of judges and certain political figures in this city and initially indicated that he was willing to cooperate with the Government in an effort to obtain evidence of this corruption. During my discussions with Mr. Steinman, Mr. Steinman supplied various names of public officials and political figures and told us that he had hearsay knowledge of their being involved in serious criminal activities. Mr. Steinman was asked to relate specific facts, he refused to do so claiming at times lack of recollection and at other times fear of reprisals. Since the Government has not verified any of these allegations it would be inappropriate and unfair to set forth the individuals' names and the specific allegations.

4. At no time, did I or anyone else in my presence, propose that Mr. Steinman "bug" Meade Esposito's office. I never told Mr. Steinman that Mr. Esposito was "high" on a wanted list. The discussion as to Mr. Esposito was initiated by Mr. Steinman and never touched on any of the matters mentioned in Steinman's affidavit. Moreover, at no time did I, or anyone else in my presence, suggest that Mr. Steinman "set up" Arthur Brasco. Again, it was Mr. Steinman who initiated the conversation relating to Arthur Brasco and any further specifics as to that conversation would be inappropriate for the reasons set forth in paragraph 3 above.

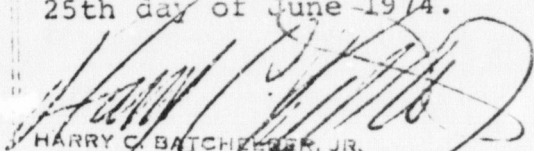
5. At various times I discussed with Mr. Steinman the names of judges, assemblymen and congressmen concerning whom Steinman claimed to have hearsay information pertaining to their criminal activity. I never read Mr. Steinman any list of public officials except a list of allegedly corrupt judges which Mr. Steinman possessed and displayed to an undercover agent in the course of the conspiracy. The only names discussed on the list were those Steinman claimed were corrupt. However, I did emphasize to Mr. Steinman that he should give us specifics rather than broad general statements and that for the information to be worthwhile he

would have to be willing to corroborate it. Steinman refused to undertake to corroborate any of these allegations.



RUDOLPH W. GIULIANI
Assistant United States Attorney

Sworn to before me this
25th day of June 1974.



HARRY C. BATCHELDER, JR.

Notary Public, State of New York

No. 24-0186230

Qualified in Kings County

Certificate filed in New York County

Commission Expires March 30, 1976 HCB

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

AFFIDAVIT

----- -x
WILLIAM STEINMAN, :

Plaintiff, :

-against- :

MAURICE H. NADJARI, :
INDIVIDUALLY AND AS SPECIAL DEPUTY :
ATTORNEY GENERAL OF THE STATE OF NEW YORK, :

Defendant. :
----- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MARK I. FEDERMAN, being duly sworn, deposes and says:

1. I am a special Assistant Attorney General in the Office of Deputy Attorney General Maurice H. Nadjari, and in that capacity I was assigned to an investigation involving William Steinman. This affidavit is being submitted on information and belief except where specifically stated that the facts and matters are based upon my own knowledge.

2. This affidavit is being submitted in opposition to an affidavit submitted by William Steinman in the above-captioned case.

3. SUMMARY OF FACTS

An investigation into the illegal activities of William Steinman was begun by the Office of the United States Attorney for the Southern District of New York with the cooperation of the New York City Police Department. This investigation was commenced following the receipt of information from Nicholas DiStefano, a reliable federal informant, that William Steinman, who was then Administrative Assistant to the Comptroller for the State of New York, had agreed to receive money to illegally and improperly influence the actions of government agencies and public officials.

On February 20, 1973, Nicholas DiStefano met with Steinman and informed him that he knew a girl, Virginia Morgan, who had been arrested in Kings County for the crime of possession

of a weapon. Steinman thereupon agreed to attempt to obtain a dismissal or other favorable disposition of the Morgan Case. From February 20, 1973, until September 25, 1973, Steinman conspired with Nicholas DiStefano and other to "fix" the pending criminal case of Virginia Morgan.

It was Steinman's plan to fix the Morgan Case through several of his former political associates who were then serving as public officials within the criminal justice system for the County of Kings. To effect the purpose of the conspiracy, Steinman obtained a list of the Justices of the Kings County Supreme Court. In reviewing this list with DiStefano, Steinman noted which Justices he knew and could approach with regard to the Morgan Case. Mr. Steinman did in fact confer with judges and other public officials for the purpose of securing favorable treatment for Virginia Morgan.

Steinman also told the government informant that the Morgan Case would have been more easily disposed of during the Grand Jury stage of the proceedings. Steinman stated that he had a friend who worked as a warden for the Kings County Grand Jury and this friend knew many of the assistant district attorneys.

During the course of the conspiracy Steinman told Distefano that he would need \$10,000 for fixing the Morgan Case and that this money would be used to pay certain named public officials including a judge, two political leaders, and an assistant district attorney. In August 1973 Steinman asked for and received the sum of \$1,000 in cash, saying that he needed the money for "expenses" because "the bastards are hungry," (a reference to the public officials who were to fix the case). In September of 1973, Steinman asked for and was paid an additional \$5,000 in cash, telling the federal informant that "the DA is squawking for his money."

In August, 1973 the Office of the United States Attorney for the Southern District of New York became aware that the criminal activities of William Steinman fell more squarely within the jurisdiction of state law enforcement agencies and transferred this investigation to the Office of the Special Prosecutor. Thereafter, eavesdropping devices were installed, pursuant to lawful

court order, to intercept the telephonic communications of William Steinman. Evidence derived from those interceptions provided further information about Steinman's corrupt activities including an attempt to illegally influence public officials within the Office of the State Comptroller for the purpose of obtaining a substantial mortgage on behalf of a New Jersey bank.

On September 25, 1973 William Steinman was arrested in the vicinity of the Kings County Supreme Court with the sum of \$5,000 in cash in his pocket. Just seconds before his arrest Steinman had been paid the \$5,000 by Nicholas DiStefano pursuant to his request that he needed the money to pay the assistant district attorney who had helped to fix the Morgan Case. Steinman had also stated that he would be paying \$2,500 of this money to his contacts within the Office of Probation who would arrange for a favorable probation report for Virginia Morgan.

4.

ENTRAPMENT

William Steinman bases his allegations upon the claim that he was entrapped into the commission of the crimes charged in the indictment for the purpose of thereafter entrapping other public officials. The Brief filed herein by the Special State Prosecutor and accompanying Affidavits clearly demonstrate that Mr. Steinman's assertion is groundless and based upon various false statements and misrepresentations of fact.

Neither I nor any member of the Office of the Special Prosecutor ever entrapped the plaintiff or employed him for the purpose of entrapping others.

After his arrest the plaintiff was brought to the Office of the Special Prosecutor where he stated that we had caught him "dead". The plaintiff requested and was afforded the opportunity to cooperate with law enforcement agencies in the investigation of corrupt public officials. Those public officials discussed with the plaintiff had previously been mentioned by the plaintiff himself during the course of the commission of the crimes for which he is now indicted.

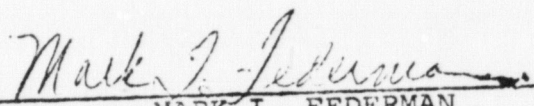
The plaintiff provided some general information with respect to corruption in the criminal justice system of the County

of Kings including the purchasing of judgeships through corrupt political leaders. The plaintiff initially agreed to participate in an investigation of this situation. However, in December of 1973, the plaintiff informed me that he was advised not to cooperate any further because of health reasons. He later stated to members of my staff that he would not cooperate because he was not a "rat".

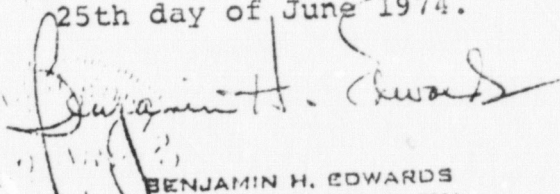
The instant indictment was filed by the Extraordinary and Special Grand Jury for the County of Kings on December 18, 1973.

Both I and each member of my staff associated with this case have at all times acted in accordance with proper law enforcement procedures and standards.

5. Wherefore, it is respectfully requested that the plaintiff's applications and complaint be dismissed.


MARK I. FEDERMAN
Special Assistant Attorney General

Sworn to before me this
25th day of June 1974.


BENJAMIN H. EDWARDS
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN SUFFOLK COUNTY
NO. 52-1078343
TERM EXPIRES MARCH 30, 1975

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

AFFIDAVIT

-----x
WILLIAM STEINMAN,

:
Plaintiff, :

-against- :

MAURICE H. NADJARI,
INDIVIDUALLY AND AS SPECIAL DEPUTY
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

:
Defendant. :
-----x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOSEPH A. PHILLIPS, being duly sworn, deposes and says:

1. I am Chief Assistant to Maurice H. Nadjari, Special Deputy Attorney General of the State of New York.

2. This affidavit is respectfully submitted in opposition to the plaintiff's applications for the convening of a three-judge court and a temporary injunction, and in opposition to his complaint for a declaratory judgment and permanent injunction.

3. The plaintiff, William Steinman, was indicted on December 18, 1973 by the Extraordinary Grand Jury of the County of Kings on three counts charging him with the crimes of Conspiracy in the Third Degree, Attempted Bribery in the Second Degree, and Grand Larceny in the Second Degree. Plaintiff's trial on these charges is presently pending.

4. An investigation of William Steinman relating to his participation in the offenses with which he is charged and other offenses was conducted jointly by the Special State Prosecutor and the United States Attorney for the Southern District of New York. Mr. Steinman was indicted in good faith as a result of testimony before a New York State Grand Jury establishing the commission of certain offenses.

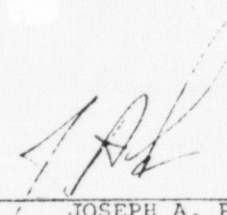
5. Pursuant to an order of the Appellate Division of the Supreme Court, Second Department, entered on January 25, 1974,

William Steinman brought preliminary motions directly before a Term of the Appellate Division, seeking, inter alia, an order pursuant to Section 210.20 of the Criminal Procedure Law dismissing the indictment in the furtherance and in the interest of justice. The plaintiff raised at that time substantially the same issues presented in his instant application for injunctive relief and complaint for declaratory judgment.

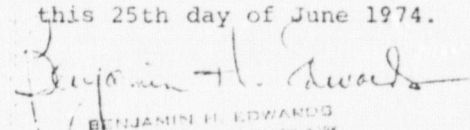
6. Plaintiff also complained before the Appellate Division that I erroneously informed the Justices thereof that the use of ostensibly arrested and convicted undercover agents was approved by Chief Judge Fuld. That inadvertent error was corrected before the Appellate Division by means of a letter submitted by me to the Court. That letter truly reflects the common understanding of previous discussions concerning this matter.

7. Plaintiff's present applications and action in Federal Court raise no substantial issues not previously litigated, or pending, in state court.

8. On May 20, 1974 the Appellate Division denied plaintiff's motions and remanded the matter for trial ordering that the trial court develop at a pretrial hearing all the essential facts showing the manner in which the events leading to the prosecution of the plaintiff were planned and carried out. The Appellate Division left the resolution of the issues of entrapment and alleged prosecutorial misconduct to be determined in the first instance by the trial court.


JOSEPH A. PHILLIPS
Special Assistant Attorney General

Sworn to before me
this 25th day of June 1974.


BENJAMIN H. EDWARDS
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN SUFFOLK COUNTY
NO. 52-1078310
TERM EXPIRES MARCH 30, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

WILLIAM STEINMAN,

Plaintiff,

-against-

REPLY AFFIDAVIT

MAURICE H. NADJARI, individually and as
Special Deputy Attorney General of the
State of New York,

Defendant.

-----X

STATE OF NEW YORK)
COUNTY OF KINGS) SS:

AARON NUSSBAUM being duly sworn, deposes and says:

1. I am of counsel to Hervey & Legum, Esqs., attorneys
for the plaintiff herein.

2. This affidavit is respectfully submitted in reply
to the defendant's motion to dismiss the complaint for a
declaratory judgment and permanent injunction and plaintiff's
application for a three-judge constitutional court.

3. The defendant's brief in support of the motion to
dismiss was delivered to plaintiff's attorneys ^{Point I} after service of a brief
upon the defendant of the plaintiff's action for a declaratory
judgment with injunctive relief and for the convening of a
constitutional three-judge court. The arguments of law set
forth in the plaintiff's memorandum of law are in complete answer
to the points raised by the defendant's brief. The defendant's
Point I, namely, that "Plaintiff's application for a three-judge
court must be denied since the unconstitutionality of a state
statute is not alleged" is wholly untenable. The settled law
is that federal intervention by declaratory and injunctive
relief is properly maintainable against enforcement of a

state statute, if it is unconstitutionally applied. (Steffel v. Thompson, ___ US ___, decided March 19, 1974, 14 Criz L. 3123; Younger v. Harris, 401 US 37; Samuels v. Mackell, 401 US 66; Harris v. Mainwright, 491 F 2d 417 (CA 5, 1973); Department of Employment v. United States, 385 US 355; Query v. United States, 316 US 486; Ex Parte Bransford, 310 US 354).

4. The defendant's Point II, namely that "Plaintiff has failed to state any basis for federal injunctive or declaratory relief against a pending, good-faith state prosecution" is likewise untenable, in view of the judicial precedents directly applicable to the extraordinary prosecutorial misconduct conclusively documented at bar (Points I and II, Plaintiff's Memorandum of Law).

5. The defendant contends that "plaintiff raises no issue that could justify federal intervention under any circumstances. Expressed in varying ways in his pleadings, plaintiff complains essentially of entrapment, and it has always been held that "the defense (of entrapment) is not a constitutional dimension." United States v. Russell, 13 Cr. L. 3055, 3058 (1974)."

6. Our reply is, of course, that this case involves no ordinary claim of entrapment merely, but ranges into a constitutional quagmire of prosecutorial misconduct so shocking to the conscience and so revolting to the fundamental maxims of justice and to the canons of decency in civilized society as to invoke this Court's intervention under the Due Process Clause of the Constitution of the United States. (Rechin v. 342 US 165; Russell v. United States, 411 US 423 (Opinion by Rehnquist, J. at pp. 431-432); United States v. Archer, 466 F 2d 670).

7. In an opinion just handed down by the United States Court of Appeals for the Second Circuit, United States v. Toscanino, Docket No. 73-2732, Slip Opinion, P. 3493, decided May 15, 1974, it was pointed out that the interpretation of "due process" has been expanded in recent years; that it is no longer limited extended to bar the government from realizing directly the fruits of its own deliberate and unnecessary lawlessness in bringing the accused to trial." The Court also stated:

"Thus the Court's decision in Rochin (Rochin v. California, 342 US 185 (1952) and Mapp v. Ohio, 367 US 643 (1961) unmistakably contradict its pronouncement in Frisbie (Frisbie v. Collins, 342 US 519 (1952) that 'due process of law is satisfied when one present in court is convicted of crime after being fairly apprized of the charges against him and after a fair trial in accordance with constitutional procedural safeguards.' The requirement of due process is obtaining a conviction is greater. It extends to the pretrial conduct of law enforcement authorities." (Emphasis supplied) (p. 3506)

* * *

"* * * Accordingly, we view due process as now requiring a court to divest itself of jurisdiction over the person of a defendant where it has been acquired as the result of the government's deliberate, unnecessary and unreasonable invasion of the accused's constitutional rights. This conclusion represents but an extension of the well-recognized power of federal courts in the civil context to decline to exercise jurisdiction over a defendant whose presence has been secured by force or fraud. See In re Johnson, 167 US 120, 126 (1896); Fitzgerald Construction Co. v. Fitzgerald, 137 US 98 (1890)." (p. 3508)

8. The defendant's contention, appearing in the last page of his brief that "There is absolutely no showing that the state courts will not determine the issues raised by plaintiff conscientiously and in good faith. Indeed, there is every indication in the proceedings thus far that the courts of the State of New York are doing so." takes absolutely no account of the unique and special circumstances under and by which the

plaintiff will be irreparably damaged at the trial level by any trial presided over by Judge Murtagh involving the defendant NADJARI. (See Point IV, Plaintiff's Memorandum of Law).

9. The defendant's attempt to portray to this Court that the plaintiff had not been entrapped, that they did not attempt to coerce him into ensnaring the whole structure of the criminal justice system in Kings County, that he had a criminal predisposition, and that--in the tortured words of Deputy Attorney General Federman that they have "at all times acted in accordance with proper law enforcement procedures and standards" (Par. 4)--in the face of the conclusively documented fact that they deliberately violated both federal and state law in failing to arraign the plaintiff promptly in a court of law immediately following his arrest; in their attempt to coerce and intimidate him to entrap others into the commission of criminal acts of bribery; in the unauthorized and wrongful use of the prosecutorial tactic of a mock arrest and conviction of an undercover agent, which involved the filing of false affidavits, the subornation of perjury and the practice of deceit and fraud upon the Supreme Court in this connection; the inflammatory and false prejudicial pre-trial publicity systematically disseminated by the defendant regarding the plaintiff's non-existent alleged criminal predisposition; the wilful flouting of the order of the Appellate Division sealing the records in order to protect the identity and the public disclosure of the names of judges cited by the defendant NADJARI whom the defendant sought to entrap in this case; the false and fraudulent representation to the United States Court of Appeals and to the Appellate Division of the Supreme Court that the defendant had specific authorization and sanction and approval from Chief Judge Stanley Fuld to use this prosecutorial tactic of a fake arrest and conviction of an undercover agent, when as a matter of fact Judge Fuld had never authorized such a

practice but expressly disapproved such practice and had explicitly informed the defendant to such effect in April 1973.

10. Thus, this is by no means a mere entrapment case as the defendant now disingenuously contends, but a Due Process case in every constitutional dimension of that term under the judicial precedents.

11. Even at this late hour, the affidavit of Special Assistant Attorney General Joseph A. Phillips continues to mislead the Court in the following statement: "Plaintiff also complained before the Appellate Division that I erroneously informed the Justices thereof that the use of ostensibly arrested and convicted undercover agents was approved by Chief Judge Fuld. That inadvertent error was corrected before the Appellate Division by means of a letter submitted by me to the Court. That letter truly reflects the common understanding of previous discussions concerning this matter."

12. The fact is that even after the original conversation between Chief Judge Fuld and United States Attorney Whitney North Seymour regarding the latter's stated intention to the Chief Judge to employ the device of a mock arrest and conviction as a prosecutorial tactic--which initial conversation may indeed have led to inadvertent error as to whether or not Judge Fuld authorized and sanctioned the use of such tactic--the defendant NADJARI was nevertheless directly and explicitly told by Chief Judge Fuld thereafter, in April 1973, that he did not sanction or approve of such tactic, nor was it his place to do so as the Chief Judicial Officer of the State. That communication was given directly to Special Deputy Attorney General Harris, Chief of the Appeals Bureau of the defendant NADJARI'S Office. Yet, notwithstanding that explicit disapproval by Chief Judge Fuld, the defendant NADJARI not only continued to practice this

deception and fraud upon the Courts in the use of this prosecutorial tactic, and continued to misrepresent to the Supreme Court of the Appellate Division and again to this Court that the wrongful and unauthorized employment of a fake arrest in this very case after April 1973 was "inadvertent error".

13. The annexed reply affidavit of the plaintiff WILLIAM STEINMAN reaffirms, under oath, that the absolute truth of all of the statements regarding his entrapment by the defendant and the perversion of justice in the defendant's attempt to coerce him into entrapping the Justices of the Supreme Court and other public servants within the criminal justice system of Kings County had been recorded on tapes, and would absolutely confirm the truth of the statements made to this Court regarding these critical issues.

14. In the Supreme Court of the Appellate Division, your deponent moved the Court to impound all these tapes in order to insure their safety and inviolability. Your deponent further moved the Court for a complete discovery and inspection of all recorded conversations and official reports concerning his discussions with the informant, Nick DeStephano, and his conversations with Mr. Federman and Mr. Giuliani from February 20, 1973 up to the date shortly prior to his indictment on December 18, 1973. In that connection the Court granted the plaintiff's application for full disclosure and inspection thereof as applied for.

15. The plaintiff has requested "such other and further relief as to this Court may seem just and proper" in the action for declaratory judgment and injunctive relief. In pursuance thereof, it is respectfully prayed that the Court impound the tapes of all electronic recordings and official

reports of all discussions and conversations between the plaintiff and the informant DeStephano, and of all conversations with the defendant NADJARI, and with the United States Attorney for the Southern District of New York and with the members of the Police Department acting in their behalf, in order to insure their safety and inviolability until further order of this Court.


AARON NUSSEBAUM

Sworn to before me this
27th day of June, 1974.

(s) Victor W. Harvey

VICTOR W. HARVEY
Notary Public, State of New York
No. 40-6375265
Qualified in New York
Commission Expires 12/31/76

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-X

WILLIAM STEINMAN,

Plaintiff,

-against-

MAURICE H. NADJARI, individually and
as Special Deputy Attorney General
of the State of New York,

REPLY AFFIDAVIT

Defendant.

-X

STATE OF NEW YORK)
COUNTY OF KINGS) SS:

WILLIAM STEINMAN being duly sworn, deposes and says:

1. I am the plaintiff in the within action.
2. This reply affidavit is submitted in answer to the affidavits of Mark I. Federman, Special Deputy Attorney General, and Rudolph W. Giuliani, Assistant United State Attorney in the Office of the United States Attorney for the Southern District of New York, both verified June 25, 1974.
3. I earnestly state to the Court, again under oath as I have in the Appellate Division of the Supreme Court, that the statements of both Mr. Giuliani and Mr. Federman regarding my alleged "cooperation" with them, my alleged criminal pre-disposition, and alleged facts pertaining to my entrapment and their attempt to force me to entrap others within the criminal justice system of Kings County, are completely false and untrue.
4. The conclusively documented truth of my sworn statements to this Court, and the conclusive refutation of the false statements set forth both by Mr. Guilliani and Mr. Federman, can be absolutely confirmed by the recorded tapes of all the conversations I have had with the informant, Nick DeStephano,

on the very first meeting with him on February 20, 1973, right up to the day preceding my indictment on December 18, 1973. Everyone of these conversations were electronically recorded and are now in the physical possession and under the control of the defendant NADJARI.

5. On every single occasion that I was questioned in the office of Mr. Giuliani, in his presence and in the presence of various members of the Internal Affairs Division of the Police Department assigned to him, I was directed to be seated at a corner of the desk at which Mr. Giuliani was seated, where manifestly the microphone and electronic recording devices were located.

6. I know, too, that all telephone conversations that I had had with police agents of the defendant who arranged the 8 or 9 meetings that I had with Mr. Giuliani at the Federal Office Building in Foley Square, were likewise recorded by electronic device, because on several occasions after I had completed my conversations with Sgt. Powers who had arranged all of the meetings I had had with Mr. Giuliani, would pointedly read into the terminal part of the conversation the following particular as to time: "This is Sgt. Powers of the First Deputy Police Commissioner's Office. The time is now 10:47 A.M." Of course, unknown to Sgt. Powers, I had not yet hung up the receiver on the other end and Sgt. Powers was completely unaware of the fact that I was listening in to his time-labelling addenda.

7. In the Appellate Division of the Supreme Court, my attorneys had requested that the tapes and all official reports pertaining to these conversations, both with the informant, Nick DeStefano, and with Mr. Giuliani and Mr. Federman in their respective offices be impounded pending the further order of

the Court, until the completion of the trial of this case in order to insure their safety and inviolability, and to keep them readily available for the motions made on my behalf for discovery and inspection.

W.S. 8. I understand that the Appellate Division of the Supreme Court has granted my attorney's request for a complete discovery and inspection of all the tapes and official reports of all conversations that I have had with the informant and with the representative of the office of the defendant NADJARI and Mr. Giuliani's office, from the very first contact of the informant with me on February 18, 1973 up to the date of my indictment, some ^{seven} ~~three~~ months later.

W.S. 9. These tapes will absolutely contradict Mr. Federman's statement that I had told the informant DeStephano that I "would need \$10,000 for fixing the Morgan case". I at no time ever mentioned any ^{money} money to him. Whatever mention of money there was, was initiated by the informant, DeStephano and not by me at any time. Again, these tapes will absolutely disprove Mr. Federman's false assertions that on August 1973 I had "asked for" and received the sum of \$1,000 in cash; and that in September 1973 I "asked for" and was paid an additional \$5,000 in cash. I unequivocally reiterate to the Court, under oath, that in none of the three specified instances mentioned did I ever ask for ^{"\$1,000, \$1,000, or \$5,000"} money from the informant.

W.S. 10. In stark opposition to the false assertions by Mr. Giuliani and Mr. Federman that I had "initially" cooperated with them, that I had given them a list of corrupt judges and public officials, the facts themselves belie these assertions. I neither knew any corrupt judges or public officials, nor did I "cooperate" with them in any manner by identifying any of the alleged "corrupt" judges and officials. The fact is, rather,

that I was warned and threatened that unless I fully cooperated with them into setting up these named individuals, I would be "immediately" booked, fingerprinted and arraigned in the Criminal Court in connection with my original arrest on September 25, 1973, and I was further warned that I would suffer the loss of my pension while I was in jail. In that connection, Lt. Ahrens and Inspector Hess of the New York City Police Department forthrightly stated to me at their headquarters at 280 Broadway, New York City, as agents of Mr. Federman and Mr. Giuliani, that: "Give us one Supreme Court Judge and you can walk out of here, take your pension and retire to Florida and you don't have to go back to the Twin Towers", meaning the World Trade Center office of the defendant NADJARI. In this connection, I respectfully point out to the Court that both Mr. Giuliani and Mr. Federman shy away from the undeniable fact that they held me incommunicado for three months during the entire period of the time from the date of my arrest up to my indictment on December 18, 1973.

11. The Court will note that they have made no response to my affidavit to this Court concerning their failure to arraign me promptly as mandated by the law, so that I could have had the protection of a Court, the right to counsel and to the confrontation of any of their witnesses against me. Instead, Mr. Federman has the temerity to gloss over this serious violation of my constitutional right by stating to this Court, in Paragraph 4, "both I and each member of my staff associated with this case have at all times acted in accordance with proper law enforcement procedures and standards" (!).

12. Again, with less than full candor to this Court, Mr. Federman blandly asserts that "in August 1973 the Office of the United States Attorney for the Southern District of New York became aware that the criminal activities of

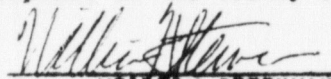
William Steinman fell more squarely within the jurisdiction of state law enforcement agencies and transferred this investigation to the Office of the Special Prosecutor". This deceptive statement to the Court by Mr. Federman fails to disclose that the primary reason for the transfer of this case to the jurisdiction of the state law enforcement agencies was the concurrent decision of the United States Court of Appeals in the Archer case condemning "manufactured" federal jurisdiction by the use of undercover agents who were residents of another state. Here, too, in the case at bar, the undercover agent used by the law enforcement agents, Virginia Morgan, was a Maryland resident, likewise intended to manufacture federal jurisdiction in the defendant's behalf as an identical prosecutorial tactic.

13. Mr. Federman states in his affidavit, Par. 4, that I "requested and was afforded the opportunity to cooperate with law enforcement agencies in the investigation of corrupt public officials" and that "those public officials discussed with the plaintiff had previously been mentioned by the plaintiff himself during the course of the commission of the crimes for which he is now indicted". Again, I earnestly submit to the Court that the tapes of all these electronically recorded conversations will conclusively prove the exact opposite. In addition to the sworn statements of fact set forth in my affidavit to this Court, I recall now, too, that in the presence of Mr. Giuliani, Lt. Ahrens of the New York City Police Department stated to me that he was very much interested in Supreme Court Judge Williams and Supreme Court Judge Morton of Kings County. I knew no more about any corrupt activities on the part of Judge Oliver D. Williams and Judge Franklin Morton, Jr., Justices of the Supreme Court of Kings County, than I did of any alleged corrupt activity on the part of any of the other named individuals thrust at me by Mr. Giuliani and Mr. Federman.

14. If I had "cooperated" with them in their attempted entrapment in wholesale fashion of the whole criminal justice system of Kings County, the obvious question that both Mr. Federman and Mr. Giuliani must answer to any Court is: Why was it necessary to put me through a three month ordeal of interrogation and inquisition? Why, in the end, did Mr. Nadjari finally indict me when it became clear to him that I could not and would not give them any information that I did not possess regarding any individual sought by them in the entrapment scheme, nor would I participate in their attempt to get any Supreme Court Justice of Kings County? And why, if I had a criminal predisposition, as falsely asserted by Mr. Federman, and if their real purpose was to ferret out corruption in the criminal justice system of Kings County, why did they arrest me after arranging for my entrapment through the informant, DeStephano, instead of letting me pursue their objective of using the money thrust into my hands by the informant, DeStephano, to bribe a public servant or judge to "fix" the Morgan case?

15. And, compounding all this misconduct on the part of Mr. Federman and Mr. Giuliani, is the fact that they had the audacity and insensitivity to arrange for my entrapment and arrest so staged as to take place almost directly in front of the Supreme Court Building of Kings County, as if to proclaim to the world that every Judge in that temple of justice was crooked and corrupt. Certainly, the setting for their nefarious scheme could have been laid just as conveniently at any other location within the broad expanse of the County of Kings.

Sworn to before me this
27th day of June, 1974.


WILLIAM STEINMAN

151 *WILLIAM W. HERVEY*

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK -x

WILLIAM STEINMAN, :
 :
 Plaintiff, :
 - against - : REPLY AFFIDAVIT
 :
 MAURICE H. NADJARI, Individually and :
 as SPECIAL DEPUTY ATTORNEY GENERAL OF :
 THE STATE OF NEW YORK, :
 :
 Defendant. :
 ----- -x

STATE OF NEW YORK)
) ss:
 COUNTY OF NEW YORK)

JOSEPH A. PHILLIPS, being duly sworn, deposes and
says:

1. I am Chief Assistant to MAURICE H. NADJARI,
Special Deputy Attorney General of the State of New York.

2. As we have previously demonstrated in our brief
in this matter, no basis exists under Federal Law for injunctive
or declaratory relief to plaintiff of any kind. Federal statutory
law and the decisions of the United States Supreme Court bar
his claim. 28 U.S.C. 2283. Samuels v. Mackell, 401 U.S. 66
(1971); Younger v. Harris, 401 U.S. 37 (1971). These authorities
are clearly and unequivocally dispositive of the defendant's
claims.

3. Although the issue of entrapment is not properly
before this Court, there are a number of assertions made by
Steinman which are entirely false. This affidavit is submitted
in response to his reply affidavit filed on June 27, 1974, at
the time of oral argument on the complaint and motion to dismiss
in the above-captioned matter.

4. Although the issue is not before the Court, it
should be noted that the investigative techniques utilized by
the United States Attorney for the Southern District of New

York in this and related cases are without doubt lawful. In fact, this investigation was directed by some of the most distinguished prosecutors and law enforcement officials in the state -- United States Attorneys Seymour and Curran, the Chief of the New York Federal Strike Force, Michael Shaw, the New York City Department of Investigations Commissioner, Nicholas Scopetta, all participated in the development of the investigative techniques utilized in this case. Probably the most prestigious and distinguished District Attorney of our time -- Frank Hogan -- utilized similar techniques in his investigations. District Attorney Hogan, moreover, in a forceful and persuasive brief to the United States Second Circuit Court of Appeals conclusively demonstrated the appropriateness of the investigative techniques utilized in this case. A copy of that brief is appended to this affidavit.

5. The investigation resulting in plaintiff's indictment was the only practical and efficacious response to widespread corruption in the criminal justice system of the City of New York. Obtaining evidence of bribery which requires corroboration under the strict standards of New York law is exceptionally difficult and often impossible using more conventional investigative techniques.

6. The investigative technique involved here was a vital and necessary tool required to eliminate extensive corruption in our criminal justice system. Just as cancer requires difficult surgical procedures, corruption must be excised with effective remedies. The techniques utilized must have the sword's sharpened edge capable of severing the ties of corruption which have insidiously subverted and ensnared this state's criminal justice system.

7. The "undercover arrest" technique was criticized by the Court of Appeals in United States v. Archer [486F. 2d 620 (2d Cir. 1973)]. The dictum criticism in that case, however, resulted from a misunderstanding of the true facts in the case caused by the lack of a trial-level hearing establishing

a complete record. A motion to reargue the Archer case resulted in a second opinion which clarified the original holding of the Archer case, and declined to rule or comment upon the investigative device utilized. In effect, the Court had substantially changed its opinion. It is also to be noted that the Court's criticism of the United States Attorney was predicated on the basis that the federal prosecutor had unwarrantedly intervened in state criminal prosecutions -- a situation which does not exist here. The federal government's extensive brief in re-argument of Archer has been appended to this affidavit.

8. Any evaluation of the investigative techniques utilized in this or the Archer case should have been based upon a complete and thorough examination of the case. Comments or opinions stated by partially-informed courts obviously confuse and muddy the law. Since a full and complete hearing of Steinman's allegation has been ordered by state courts, we are confident that the manifest necessity for the undercover arrest techniques utilized here, and its essential propriety, will be convincingly established in the near future. That evaluation will be made in light of the Supreme Court's recent decision in United States v. Russell [93 S.Ct. 1637 (1973)]. In Russell the federal undercover agent counseled, caused, aided, and abetted the manufacture and sale of narcotics. Such conduct was sanctioned because of the over-riding law enforcement objective of preventing sales and trafficking in narcotics. The agents in Russell and the agents in this case possessed no criminal intent, and their activities resulted in the benefit to society of eliminating corruption in public office.

9. Likewise, Steinman's allegation that the undercover federal agents committed a crime in this investigation is entirely erroneous. In order to obtain evidence of a complex criminal scheme, a police officer must often assist in the commission of the crime. In some cases undercover police officers have been arrested and convicted in an ongoing criminal scheme in order to gain access to further important evidence. The

undercover agent involved has not committed a crime because he does not possess the requisite criminal intent. To the outsider, the undercover officer appears to have committed a crime -- this temporary artifice is the regular and customary police procedure -- it is the essential core of practically all undercover investigations.

10. ^A It should also be noted that the plaintiff's allegation that Chief Judge Fuld disapproved of the undercover arrest technique is totally false. Chief Judge Fuld was apprised of the United States Attorney's intention to utilize this technique. At no time did Chief Judge Fuld communicate "explicit disapproval" to this office or to the United States Attorney. ~~X~~ Moreover, this office had no discussions with Chief Judge Fuld pertaining to this case. These discussions were held with the United States Attorney for the Southern District of New York, Whitney North Seymour, Jr. We merely inherited this investigation when it appeared that the federal government did not have interstate jurisdiction in the matter. ¹

11. Lastly, the defendant, in a desperate effort to support his entrapment allegation, cites the physical atrocity cases -- Rochin v. California [342 U.S. 165 (1952)], and United States v. Toscanino [2nd Cir., May 15, 1974]. Rochin -- is the famous stomach-pump case -- and Toscanino deals with allegations of kidnapping and horrible physical torture of a defendant by the government. These cases involve physical force and violence directed against the defendant's person. No such bizarre considerations are involved in this case. Toscanino, moreover, turned on whether a federal district court could properly obtain jurisdiction over a drug dealer defendant who alleged that he had been kidnapped from South America in order to be brought to trial in the Eastern District. The ruling is not even remotely applicable to the instant case.

WHEREFORE t is respectfully requested that the
plaintiff's applications and complaint be dismissed.

151 J A PHILLIPS
JOSEPH A. PHILLIPS

Sworn to before me this
8th day of July, 1974

151 BENJAMIN H. EDWARDS
Notary Public, STATE of New York
Qualified in SUFFOLK County
No. 52-1078340
TERM EXP 3/30/75

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
WILLIAM STEINMAN,

Plaintiff,

-against-

MAURICE H. MADJARI, individually and as
SPECIAL DEPUTY ATTORNEY GENERAL OF THE
STATE OF NEW YORK,

Defendant.
-----X

STATE OF NEW YORK)

: SS.:

COUNTY OF KINGS)

AARON NUSSEBAUM, being duly sworn, deposes and says:

1. I am of counsel to Hervey and Legum, Esqs., attorneys for the plaintiff WILLIAM STEINMAN.
2. This affidavit is respectfully submitted in reply to the answering affidavit of Joseph A. Phillips, Chief Assistant to MAURICE H. MADJARI, Special Deputy Attorney General of the State of New York.
3. Mr. Phillips blandly contends in his answering affidavit that "the issue of entrapment is not properly before this Court" (par. 3); and that the issue of the investigative techniques utilized by the United States Attorney for the Southern District of New York, likewise "is not before the Court", (par. 4).
4. In reply, we respectfully submit that these very issues, among others, involving the extraordinary prosecutorial misconduct at bar, form the crux of the plaintiff's action for a Declaratory Judgment (a) to declare the indictment null and void under the Due Process Clause

of the Constitution, Rochin v. California, 342 US 165; Russell v. United States, 411 US 431; Sorrells v. United States, 287 US 435, at pp. 446-8; Sherman v. United States, 356 US 369; United States v. Archer, 486 F.2d 670 (CA 2); (b) to declare the Governor's Executive Order No. 55 issued September 19, 1972, as applied to the plaintiff at bar, unconstitutional and void under the Due Process Clause of the Constitution; and (c) to declare the indictment null and void under 28 USC 1343, to redress the deprivation of the plaintiff's rights "secured by the Constitution of the United States".

5. As to the unlawful investigative technique involving the faked arrest and conviction of an undercover agent, the answering affidavit misleadingly asserts that "the (Archer) Court had substantially changed its opinion" in the second opinion, following re-argument of that issue. We do not so read the opinion of the Archer court. In its per curiam opinion, rendered on the petition for rehearing, the Court reiterated its view identically as originally expressed, in words as follows:

"The Government devotes much of its petition to issues which we felt desirable to ventilate in view of the appellants' arguments but were at pains neither to decide nor to pronounce dicta. Nine pages of the petition are devoted to an attempt to show that the Government agents committed no crimes and that what it chooses to call the 'investigating technique' here employed 'was entirely proper,' although we expressly left 'resolution of this difficult question for another day,' 486 F.2d at 677."

Thus, the United States Court of Appeals for the Second Circuit has by no means departed from its original view bluntly expressed in Archer, 486 F.2d 670, at p. 677:

"In this case the Government argues, its conduct did not infringe the rights either of the defendants or of any third parties; see fn. 5 Yet the Government agents displayed an arrogant disregard for the sanctity of the state judicial and police processes. The investigators apparently permitted their deserved contempt for corrupt practitioners in the Queens criminal justice system to spill over into disdain for all the participants in the system—including the police, the courts, and the members of the grand jury, all of whom were subjected to the Government's fabrications. While this pattern of deception may be less serious than some forms of governmental participation in crime that can be hypothesized it is substantially more offensive than the common cases where government agents induce the sale of narcotics in order to make drug arrests.

Since we conclude reversal to be required on another ground, we leave the resolution of this difficult question for another day. We hope, however, that the lesson of this case may obviate the necessity for such a decision on our part."

Accordingly, that issue remains directly before this court as one of the items of prosecutorial misconduct at bar.

6. To legitimize the perjury, subornation of perjury, deceit and fraud practiced upon the courts in the deployment of this prosecutorial technique, on the ground that "the undercover agent involved has not committed a crime because he does not possess the requisite criminal intent" (par. 9), is to sanction the high-handedness of any police officer or prosecutor above the rule of law. It is a dangerous argument more fitting to the "well-intentioned" tyrannies of despots than to the basics of due process of law, in our civilized society. It is a rejected argument born of the same self-righteousness proclaimed by all those who would sanctimoniously coerce confessions from helpless victims by

brutal physical or psychological means, or illegally seize evidence in flagrant violation of the constitutional right of privacy. It is a cynical rationale shamelessly and brazenly advanced by all those who would cover up the lawless burglaries and perjuries of Watergate in the name of the "national security", or the shocking ransackling of confidential psychiatrist files, logically leading to such obstruction of justice tactics as the holding of this plaintiff incommunicado for three tortuous months instead of promptly arraigning him in a court of law--as just another presumably "vital and necessary tool required to eliminate extensive corruption in our criminal justice system"(Par. 6).

7. In reply to Mr. Phillips's statement that "the investigation resulting in plaintiff's indictment was the only practical and efficacious response to widespread corruption in the criminal justice system of the City of New York"(par. 5), we earnestly submit that in the morality of the law, there is little to choose from between the venal "fixing" of a case by any accused, and the venal "fixing" of an arrest by the devices employed by the defendant MADJARI in this case.

To hold that these methods of entrapment, coercion, perjury, fraud and deprivation of civil rights are "the only practical and efficacious response to widespread corruption" is to trivialize the charter of our Bill of Rights and make a mockery of due process of law. That the same results could be accomplished without resorting to unconscionable shortcuts amounting to conduct shocking to the sense of justice is classically illustrated by the extraordinary

successes managed by the Knapp Commission itself and the Cox-Jaworski Department of Justice current investigation, acting within the traditional bounds of law enforcement. "If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy" (Justice Brandeis, Olmstead v. United States, 277 US 438).

8. In the attempt to justify this prosecutorial tactic, Mr. Phillips asserts: "probably the most prestigious and distinguished attorney of our time---Frank Hogan---utilized similar techniques in his investigation. District Attorney Hogan, moreover, in a forceful and persuasive brief to the United States Court of Appeals conclusively demonstrated the appropriateness of the investigative techniques utilized in this case. A copy of that brief is appended to this affidavit." (Par. 4).

In reply, we earnestly submit that Mr. Hogan would never have tolerated the inexcusable excesses of prosecutorial misconduct in this case. On Page 3 of Mr. Hogan's brief to the U.S. Court of Appeals, he stated: "In short, to preserve the integrity of the system of justice, it may be necessary to prepare a fictional case, if that can be done without entrapping the targets or otherwise violating their constitutional rights." (emphasis ours). Certainly, Chief Judge Stanley H. Fuld, formerly Chief of the Appeals Bureau of Mr. Hogan's office, would never have tolerated these practices.

The views of Mr. Phillips on behalf of the defendant MADJARI are in sharp contrast to the reported views

of the chief counsel of the House Judiciary impeachment panel, John Michael Doar, Esq.: "To me, success is seeing that justice is done, that the Constitution is preserved and fairness occurs". (New York Times, July 12, 1974, p. 23).

9. Mr. Phillips' affidavit falsely and misleadingly states as follows in par. 10:

"It should also be noted that the plaintiff's allegation that Chief Judge Fuld disapproved of the undercover arrest technique is totally false. Chief Judge Fuld was apprised of the United States Attorneys' intention to utilize this technique. At no time did Chief Judge Fuld communicate 'explicit disapproval' to this office or to the United States Attorney. Moreover, this office had no discussions with Chief Judge Fuld pertaining to this case. These discussions were held with the United States Attorney for the Southern District of New York, Whitney North Seymour, Jr. We merely inherited this investigation when it appeared that the federal government did not have interstate jurisdiction in the matter."

The conclusively demonstrable fact is, however, as specifically detailed in the affidavit of deponent verified June 10, 1974 in support of the Order to Show Cause for a three-judge court, that the office of the defendant MAURICE H. MADJARI had been directly informed, as late as April, 1973, that Chief Judge Fuld had expressly disapproved the lawless undercover arrest technique, and that notwithstanding, Mr. Madjari's office continued to deploy such unlawful technique thereafter, in concert with federal prosecutor's office involving fraudulent arraignment proceedings of the undercover agent before Mr. Justice Starkey of the Supreme Court of Kings County on May 22, 1973, fraudulent plea proceedings before Mr. Justice Kartell on September 10, 1973, and fraudulent sentence proceedings before the same Justice on October 23, 1973.

10. In support of federal intervention, this case overwhelmingly meets the test of "extraordinary circumstances where the danger of irreparable loss is both great and immediate" (Younger v. Harris, 401 U.S. 37, 45); the test of a "very unusual situation where necessary to prevent immediate irreparable injury" (Sagulis v. Mackell, 401 US 66, 67; the test of "special circumstances" and "unusual circumstances" (Steffel v. Thompson--US--(1974, 14 CrL 3123).

11. Supplementing par. 8 of the plaintiff's Action for Declaratory Judgment and Point IV of the plaintiff's Memorandum of Law filed herein, deponent respectfully calls the Court's attention to the recently reported decision in People v. Bell, --App. Div. 2d--(1st Dept., NYLJ July 10, 1974, (PP. 2,4), prosecuted by the office of Mr. MADJARI before Mr. Justice Murtagh.

In reversing that conviction, the Court unanimously held:

"It is clear that the totality of the trial court's errors were prejudicial and, in effect, denied Richard Bell a fair trial."

Further, the Court held that Mr. Justice Murtagh had improperly charged the jury "in that it appears to emphasize the strength of the prosecution's case, in derogation of the requirements to give balanced instructions."

WHEREFORE, it is respectfully requested that the plaintiff's motion for a three-judge constitutional court be granted herein, and the defendant's motion to dismiss the action for Declaratory Judgment be in all respects denied.

Sworn to before me this
12th day of July, 1974.

Theresa Nugiforo
Notary Public, State of New York
No. 41-8164575 Queens County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
WILLIAM STEINMAN,

Plaintiff,

-against-

MAURICE H. NADJARI, individually and as
SPECIAL DEPUTY ATTORNEY GENERAL OF THE
STATE OF NEW YORK,

Defendant.
-----X

74 C-898

STATE OF NEW YORK)

SS.:

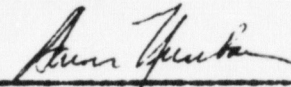
COUNTY OF KINGS)

AARON NUSSEBAUM, being duly sworn, deposes and says:

1. Following the filing of my Reply Affidavit dated July 12, 1974 with the Court, I forwarded a copy thereof, on that date, together with a copy of Mr. Phillip's affidavit to Hon. Judge Stanley H. Fuld.

2. Judge Fuld phoned me on July 13, 1974 and informed me that he is forwarding to me, for submission to the Court, a photostatic copy of his diary entries under date of April 5, 1973 pertaining to his conversation with Mr. Nadjari's office on that day, regarding the subject matter contained in Par. 9 of the Reply Affidavit.

3. Annexed hereto and made part hereof are photostatic copies of said diary entries, together with Judge Fuld's covering letter thereto, received by me today.



Sworn to before me this

17th day of July, 1974.

by David W. Harvey

KAYE SCHOLER, FIERMAN, HAYS & HANDLER

425 PARK AVENUE NEW YORK, N.Y. 10022

(212) PLAZA 8-8400

July 15, 1974

MILTON HANDLER
FREDERICK R. LIVINGSTON
STANLEY D. WAXBERG
MILTON KUNEN
JOSEPH C. CONNOLLY
SIDNEY J. SILBERMAN
FREDERICK GELBERG
STANLEY D. RUBINSON
FRED A. FREUND
STUART MARKS
SAUL GUYE KRONQVET
SAUL Z. COHEN
R. W. NIMAN
WILLIAM J. GRAPSON
SHELDON QUENIS
FRED A. FISHERMAN
FREDERICK H. BULLEN
GERALD FELLER
ARNOLD I. GOLDBERG
NORMAN EINRICH
DORNE GLEICK
JOSHUA F. FRIEDBERG
DAVID KLINENBERG
MILTON J. SCHUBIN

PETER M. FISHER
LAWRENCE NEWMAN
PETER H. WEL
SEYMOUR GOLDSTEIN
DAVID GOLDBERG
MELVIN MICHAELSON
DONALD J. CURRIE
BERTHAH A. ADAMS
JULIUS BERMAN
MICHAEL MALINA
JOEL B. ZWEIFEL
MARTIN S. GILMAN
JOHN T. DUNNE
JOHN A. FRIEDMAN
SIDNEY KWESTEL
STANLEY ROSENBERG
JAY G. STRUB
ALVIN KESSIDIS
GERALD SODOL
RONALD L. UNGER
ELIZABETH READ
HENRY A. UMAN
S. L. WASHBURN
JEFFREY M. EPSTEIN

STANLEY H. FULD
HAROLD L. FIERMAN
SPECIAL COUNSEL

JACOB SCHOLER
JAMES S. HAYS
NATHANIEL H. JACOBSON
RICHARD C. FLESCH
JAY O. KRAMER
SIDNEY A. DIAMOND
COUNSEL

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KAYEMACLER NEW YORK
KAYEMACLER NEUILLY/SEINE

TELEX NUMBERS
NEW YORK DOMESTIC 126921
NEW YORK INT'L 234880
PARIS LEFFAVRE 689717

Aaron Nussbaum, Esq.
16 Court Street
Brooklyn, New York 11241

Dear Mr. Nussbaum:

I am enclosing a photographic copy of the "Thursday, April 5" entry in my 1973 diary which notes my conversation with Mr. Harris of Mr. Nadjari's office.

Sincerely,

Stanley H. Fierman

Enc.

THURSDAY, APRIL 5

(95)

A.M.

Call 5:15 pm
Meeting - 5:45 pm

Call 4:45 pm
Call 4:45 pm - no sanction
at 4:45 pm - no sanction
as described by Harris
in a meeting with
the police officers
before the meeting

P.M.

12:00

2:30 - Dr. Abeloff

3:22 -

4:00

4:30 - Hall & ...
... of ...
... police officers
...
...
...

#483-4567 Call to Mr. Harris (of Mr. Nadjari's
Office)---no sanction or approval of tactics to be used
as described by Mr. Harris. Police officers may testify
fairly to incidents solved with offenders before Raack
Commission.

1
#488-4557 Call from Mr. Harris (of Mr. Nadjari's
Office)---no sanction or approval of tactics to be used
as described by Mr. Harris: Police officers may testify
falsely to ingratiate selves with offenders ^{before} ~~in~~ Racing
Commission.

if * I told ~~him~~ Mr. Harris I could not sanction or approve
-- ~~if that's what~~ he or Mr. Nadjari desired--~~arrangement~~ that
police officers falsify testimony before Racing Commission
in order that they might ingratiate themselves with individuals
involved in revocation proceedings."

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
WILLIAM STEINMAN, :

Plaintiff, :

-against- :

74 C- 38

MAURICE H. NADJARI, individually and :
as SPECIAL DEPUTY ATTORNEY GENERAL :
OF THE STATE OF NEW YORK, :

Defendant. :

-----x
STATE OF NEW YORK-)
) ss:
COUNTY OF NEW YORK)

JOSEPH A. PHILLIPS, being duly sworn, deposes and says:

I am the Chief Assistant Special Prosecutor, and as such I am familiar with the facts and circumstances in this matter.

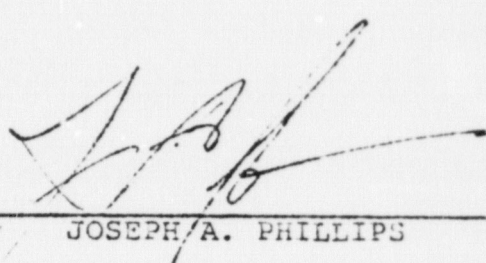
This affidavit is made in opposition to the defendant's application for a declaratory judgment and an injunction.

On or about July 17, 1974, counsel for the defendant submitted to the Court an affidavit which contained a photographic copy of a page of Chief Judge Fuld's diary for April 5, 1973. The copy we have received is illegible.

The diary entry clearly indicates that a discussion occurred between Mr. Harris of this office and Chief Judge Fuld relating to an investigation conducted by this office of Racing Commission activities. That investigation in no way concerns Mr. Steinman, and that conversation is entirely irrelevant to these proceedings. Insofar as any conversation with Chief Judge Fuld is relevant to these proceedings it is a conversation with United States Attorney Whitney North Seymour.

Wherefore, your opponent respectfully reiterates our request that the defendant's applications be denied in all respects.

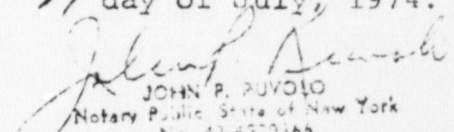
The basis for our request for dismissal of the defendant's complaint and application has already been set forth in extensive affidavits and a brief previously submitted to the Court.



JOSEPH/A. PHILLIPS

Sworn to before me this

19 day of July, 1974.



JOHN P. RUVOLO
Notary Public, State of New York
No. 474570365
Qualified in Richmond County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
WILLIAM STEINMAN

v.

MAURICE H. NADJARI, individually
and as Special Deputy Attorney
General of the State of New York
-----x

:
:
74-C-898

:
MEMORANDUM and
ORDER

:
AUG 8 1974

A p p e a r a n c e s :

Hervey & Legum, Esqs., 16 Court Street, Brooklyn, New York
11241, by Aaron Nussbaum, Esq., for plaintiff

Maurice H. Nadjari, Esq., Deputy Attorney General, Special
Prosecutor, 2 World Trade Center, New York, New York
10047, by Melvin M. Dildine, Esq., Special Assistant
Attorney General, for defendant

This is an action to convene a three-judge court, pursuant to 28 U.S.C. §§ 2281 and 2284, seeking the following relief: (1) a declaratory judgment that the state prosecution of plaintiff is being carried out in an unconstitutional manner; and (2) an injunction barring the defendant and his agents from continuing the prosecution. Plaintiff was indicted on December 18, 1973 by the Extraordinary and Special Grand Jury for the County of Kings for the crimes of conspiracy in the third degree, attempted bribery in the second degree, and grand larceny in the second degree. He had been arrested September 25, 1973 after an investigation started by the office of the United States Attorney for the Southern District of New York and completed by defendant's office after the decision in United States v. Archer, 486 F.2d 670 (2d Cir. 1973).

On January 25, 1974 the Honorable J. Irwin Shapiro, Associate Justice of the Appellate Division of the Supreme Court, Second Judicial Department, granted an order authorizing the plaintiff herein to bring certain pretrial motions before a term of the Appellate Division. Those motions, briefly summarized, requested dismissal of the pending indictment on the ground that the defendant herein,

the Special Deputy Attorney General, had abused his powers with regard to the investigation and prosecution of this criminal matter; disqualification of the Honorable John M. Murtagh, presiding Justice of the Extraordinary Special and Trial Term; disqualification of Maurice H. Nadjari, the defendant herein, from conducting the prosecution; discovery; and an order impounding tapes of electronic recordings made during the course of the investigation of the plaintiff. On May 20, 1974 the Appellate Division denied all but the plaintiff's discovery motions. In adopting the concurring opinion of Justice Shapiro in Klein v. Murtagh, 44 App. Div. 2d 465, 355 N.Y.S.2d 622, 630 (2d Dep't 1974), the Appellate Division indicated its view that the questions raised should be decided at the trial level.

Plaintiff's allegations in the case at bar are similar to those raised before the Appellate Division. He asserts that he was unfairly "entrapped" into committing the acts which led to his indictment. Further, plaintiff claims that the prosecutors have engaged in gross misconduct in that they threatened plaintiff with the indictment before he finally was indicted and attempted to coerce him into "cooperating" with the prosecution by "setting up" Justices

of the Supreme Court, Kings County and other public officials, i.e., involve them in crimes similar to those he is charged with. In an affidavit in support of the motion plaintiff specifies his allegations of misconduct on the part of defendant's agents. The defendant strenuously denies these factual allegations. The court makes no findings with respect to plaintiff's charges of prosecutorial misconduct. It does, however, share the concern of Judge Friendly in United States v. Archer, 486 F.2d 670 (2d Cir. 1973) and Justice Shapiro in Klein v. Murtagh, 44 App. Div. 2d 465, 355 N.Y.S. 2d 622, 630 (2d Dep't 1974) (concurring opinion), that investigatory methods should not undermine the integrity of the judicial process.

Defendant opposes plaintiff's motion on the authority of Younger v. Harris, 401 U.S. 37 (1971) and Samuels v. Mackell, 401 U.S. 66 (1971). However, a three-judge court must be convened in order to dismiss on Younger-Samuels principals, i.e., ^{whether} ~~whether~~ the requisite bad faith enforcement or other special circumstances exist. Steffel v. Thompson, 42 U.S.L.W. 4357, 4359, n. 7 (March 19, 1974); Abele v. Markle, 452 F.2d 1121 (2d Cir. 1971).

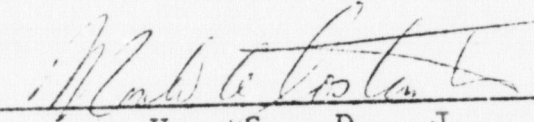
A district court faced with an application for a

three-judge court is limited to determining (1) whether the constitutional question is substantial; (2) whether the complaint at least formally alleges a basis for equitable relief, and (3) whether the case otherwise comes within the requirements of the three-judge statute. Idlewild Don Voyage Liquor Corp. v. Epstein, 370 U.S. 713, 715 (1962) (per curiam). The statute is to be narrowly construed. Phillips v. United States, 312 U.S. 246 (1941). Without deciding whether the first two requirements have been met, the court questions whether the three-judge statute is intended to apply to this type of case. Plaintiff argues that the statute, Executive Law § 63 (McKinney 1951) and Executive Order No. 55, under which the office of the Special Deputy Attorney General was set up, are unconstitutional as applied to him because agents of the Special Deputy Attorney General allegedly acted improperly by depriving him of his constitutional rights. Accepting the allegations as true for the purposes of this motion, Goosby v. Osser, 409 U.S. 512, 521, n. 7 (1973); Nieves v. Oswald, 477 F.2d 1109, 1112 (2d Cir. 1973), the real issue presented here is not whether the statute is unconstitutional, even as applied to the plaintiff, but rather whether acts committed by state officers appointed

under the authority of a statute deprive the plaintiff of due process and warrant federal intervention under the three-judge court statute. This court must pass upon the authority of federal courts to intervene in state criminal prosecutions. When what in substance being challenged is neither a statute, nor the policy underlying the statute, but rather the activities of a state officer appointed under the authority of the statute, resort to a three-judge court is inappropriate. Phillips v. United States, 312 U.S. 246 (1941); Ex Parte Bransford, 310 U.S. 354 (1940); Galvan v. Levine, 490 F.2d 1255, 1258 (2d Cir. 1973). The statute and executive order under which the Special Deputy Attorney General was appointed and operates cannot be construed to authorize the alleged wrongful activities. Therefore, the policy of the three-judge court statute - to protect state statutory policy from being overturned by a single federal judge - would not be served by convening such a court here. Congress did not intend for federal courts to interfere with the execution of state statutes except where a showing is made that the statute is unconstitutional on its face or as applied; it recognized that adequate remedies exist within the states for solving problems of the type presented here.

Since plaintiff has failed to fulfill the strict requirements for convening a three-judge court, his application must be denied.

The Rule 12(b)(6) motion pending, which must hereafter be treated as a Rule 56 motion for summary judgment, is not decided. The court, however, will entertain a motion to dismiss the complaint.


U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

SILVIAN STEINMAN,

Plaintiff,

-v-

HARRISON W. KATZMAN, individually and
as Special Deputy Attorney General of the
State of New York,

Defendant

-----X

74-C-898

NOTICE OF APPEAL

Notice is hereby given that SILVIAN STEINMAN,
the plaintiff above-named, hereby appeals to the United States
Court of Appeals for the Second Circuit, from the Order dated
August 3, 1974, made by the Honorable Mark A. Costantino, United
States District Judge for the Eastern District of New York,
denying plaintiff's application for a three-judge court pursuant
to 28 U.S.C. Sections 2281 and 2284.

Dated: Brooklyn, New York

September 6, 1974

HERVEY & LEON, Esqs.,
Attorneys for Plaintiff,
Office & F.O. Address,
16 Court Street,
Brooklyn, New York 11241

by

AARON RUBINSON
of counsel.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
WILLIAM STEINMAN,

Plaintiff,

Docket
74-C-898

-against-

MAURICE H. NADJARI, individually and
as Special Deputy Attorney General
of the State of New York,

SUPPLEMENTAL
AFFIDAVIT.

Defendant.
-----x

STATE OF NEW YORK)
COUNTY OF KINGS) SS:

AARON NUSSBAUM, being duly sworn, deposes and says:

I am of counsel to HERVEY & LEGUM, ES-S., attorneys
for the plaintiff herein.

Upon the oral argument of the plaintiff's application
for a three-judge Court pursuant to 28 USC 2281 and 2284,
which the Court denied by order entered August 8, 1974,
your affirment specifically contended that the statute
under which the Extraordinary Special and Trial Term of
the Supreme Court was convened by the Governor, Section 149
of the Judiciary Law of the State of New York, was inherently
violative of the Separation of Powers doctrine guaranteed
against encroachment by the Due Process Clause of the
Fifth and Fourteenth Amendments of the Constitution of the
United States, in that by its terms, the Governor is granted
the unlimited power to terminate at will the appointment
of the Judge presiding thereat, and to replace that Judge
with another at any time and for any reason, and that,

therefore, the said statute, as well as its counterpart, Article 6, Section 27 of the New York State Constitution, are unconstitutional and void on their face, as violative of the independence of the judiciary and of the due process rights of this plaintiff to a fair and impartial trial before a court so constituted.

Subsequent to the oral argument as aforesated, the affiant commenced an independent action in the Supreme Court of the State of New York, County of Kings, for a Declaratory Judgment to declare the said statute and constitutional provision unconstitutional and void upon their face.

The plaintiff hereunto annexes as Exhibit A herein, a true copy of the action for Declaratory Judgment aforesated, now pending in the Supreme Court of the State of New York, County of Kings, as aforesated. Also annexed hereto as Exhibit B, is a true copy of the Plaintiff's Memorandum of Law filed therewith.

In this connection, the patent and flagrant unconstitutionality of the statute in issue warrants federal intervention to prevent irreparable injury to the Plaintiff flowing from a "trial" in an unconstitutional court so convened (Younger v. Harris, 401 U.S. 37; Mitchell v. Foster, 407 U.S. 225).

In the latter case, the United States Supreme Court stated:

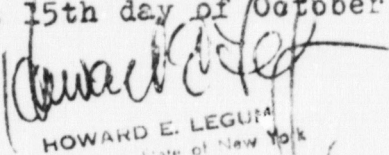
"In Younger, this Court****clearly left room for federal injunctive intervention in a pending state prosecution in certain exceptional instances----where irreparable injury is 'both

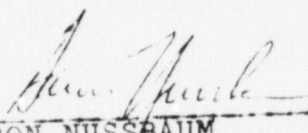
great and immediate', 401 U.S., at 46, 27 L Ed 2d at 676, where the state law is 'flagrantly and patently violative of express constitutional prohibitions,' 401 U.S. at 53, 27 L Ed2d at 631, or where there is a showing of 'bad faith, harassment, or....other unusual circumstances that would call for equitable relief. (401 U.S. at 54, 27 L Ed 2d at 681." (emphasis ours).

Due to the institution of the criminal proceeding against him under the unconstitutional statute aforesated, the Plaintiff has been forced to expend his financial resources to defend that action, and to prosecute the action in this federal court for a declaratory judgment and injunctive relief under the Due Process Clause of the Constitution, as well as the action in the state Supreme Court of Kings County to declare the statute unconstitutional under the Separation of Powers doctrine, as aforesated.

The Plaintiff is now deeply in debt, and has left barely any savings. His sole income is from a pension as state employee, which goes entirely for his basic needs of subsistence for himself and family. He is presently obligated to pay the huge expenses and legal fees involved in the taking of any appeals from each of these pending cases. Since he is without financial resources, and could not qualify as an "indigent" for the purpose of appellate assistance from the courts, the Plaintiff now faces the unjust and unacceptable alternative of being forced to abandon his right to defend and his right to appeal, unless this federal court intervenes to prevent this irreparable injury to him.

Sworn to before me
this 15th day of October, 1974.


HOWARD E. LEGUM
Notary Public, State of New York
No. 30-7476685
Qualified in Nassau County
Commission Expires March 30, 1976


AARON NUSSBAUM

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
WILLIAM STEINMAN :

74-C-898

v. :

MEMORANDUM and
ORDER

MAURICE H. NADJARI, individually :
and a Special Deputy Attorney :
General of the State of New York :

DEC 6 1974

-----X
A p p e a r a n c e s :

Hervey & Legum, Esqs., 16 Court Street, Brooklyn, New York
11241, by Aaron Nussbaum, Esq., for plaintiff

Maurice H. Nadjari, Esq., Deputy Attorney General, Special
Prosecutor, 2 World Trade Center, New York, New York
10047, by Melvin M. Dildine, Esq., Special Assistant
Attorney General, for defendant

By Memorandum and Order dated August 8, 1974 this court denied plaintiff's motion to convene a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284. Still pending is plaintiff's suit for a declaratory judgment that the state indictment of the plaintiff is "null and void under the Due Process Clauses of the Fifth and Fourteenth Amendments of the Constitution," his application for a preliminary and permanent injunction prohibiting the defendant from continuing with the prosecution of plaintiff in the state courts, and defendant's cross motion to dismiss for failure to state a claim for which relief can be granted, Rule 12(b)(6), Fed.R.Civ.P. This case presents a delicate question involving federal-state comity and requires examination of the rules enunciated by the Supreme Court in Younger v. Harris, 401 U.S. 37 (1971); Samuels v. Mackell, 401 U.S. 66 (1971), and later cases.

The essential facts were outlined in the August 8, 1974 memorandum. All that need be restated is that plaintiff alleges an abuse of discretion on the part of defendant in the investigation and prosecution of plaintiff. He contends that this case presents the "extraordinary

circumstances" and "bad faith and harassment" that the Supreme Court in Younger v. Harris, supra, referred to as justifying the intervention of a federal court in a pending state prosecution. Defendant denies plaintiff's allegations and argues that plaintiff will have a full opportunity in the course of the state prosecution to assert any defenses and objections to the actions of the prosecutor, thereby rendering resort to this court unnecessary and inappropriate.

A brief summary of the applicable standards serves to aid an analysis of the allegations herein. Chief Justice Burger recently stated in a concurring opinion in Allee v. Medrano, ____ U.S. ____, 94 Sup. Ct. 2191, 2210 (1974):

To meet the Younger test the federal plaintiff must show manifest bad faith and injury that is great, immediate, and irreparable, constituting harassment of the plaintiff in the exercise of his constitutional rights, and resulting in a deprivation of meaningful access to the state courts. The federal plaintiff must prove bad faith and requisite injury.

It is clear, then, that the Younger standard is an

401 U.S. 66 (1971), a companion decision of Younger.

There it was stated that in the context of a pending state prosecution a declaratory judgment would have "virtually the same practical impact as a formal injunction would."

401 U.S. at 72. The Court went on to hold that the standards for granting declaratory relief should be the same as for granting injunctive relief. There was an exception to this rule:

There may be unusual circumstances in which an injunction might be withheld because, despite a plaintiff's strong claim for relief under the established standards, the injunctive remedy seemed particularly intrusive or offensive; in such a situation, a declaratory judgment might be appropriate and might not be contrary to the basic equitable doctrines governing the availability of relief.

Samuels v. Mackell, 401 U.S. at 73.

A recent Third Circuit decision found that under the special facts in that case declaratory relief was called for where enjoining a pending state prosecution was inappropriate, Hoffman v. Kugler, 500 F.2d 1188 (3d Cir. 1975), petition for cert. filed, 43 U.S.L.W. 3129

extremely strict one. This reflects the reluctance of federal courts to interfere with pending state prosecutions. The Supreme Court has not stated with specificity the type of activities which would justify a federal court in enjoining a state prosecution. In Dombrowski v. Pfister, 380 U.S. 479 (1965), a pre-Younger decision, and the only recent case in which the Court has held allegations sufficient to justify federal relief, the plaintiff alleged that a state prosecutor was holding public hearings and disseminating evidence which had already been ordered suppressed by a state court. The Court held that the facts alleged justified interference because the conduct of the prosecutor "chilled" plaintiff's First Amendment right to free speech and a subsequent state trial under those circumstances would not assure vindication of that right. Since Younger was decided, however, no set of facts has been found by the Supreme Court to justify intervention by means of an injunction of the state prosecution.

The alternative of granting declaratory relief was discussed by the Supreme Court in Samuels v. Mackell,

(U.S. August 6, 1974) (No. 74-80); cross-petition for cert. filed, 43 U.S.L.W. 3285 (U.S. August 13, 1974) (No. 74-277). The case involved the question of whether a former municipal court judge could get a fair trial where his admissions made before a grand jury may have been compelled by prior testimony given to New Jersey State Supreme Court Justices acting in their administrative capacity. The Third Circuit held that under the circumstances of the case before it, federal intervention would have a limited impact on the state prosecution. The district court was authorized to hold a hearing to determine whether the grand jury testimony was coerced and to issue a declaratory judgment if coercion were found. The court was "persuaded that any precedential value to our holding is miniscule." 500 F.2d at 1198. This decision was reached over the strong dissent of Judge Adams in which Judges Van Dusen and Weis joined. They argued that both the policy against federal intrusion into state prosecutions and the constitutional right to a fair adjudication of guilt or innocence would be served by awaiting final disposition of the state procedures before resorting to federal courts for relief. The dissent

with plaintiff's claim of prejudice this court holds that to interfere with the ongoing state prosecution even by way of holding a hearing looking towards a possible declaratory judgment would be unwise and in contravention of Younger-Samuels principles. The rule as expounded by the Supreme Court does not authorize federal interference where defenses and allegations of prosecutorial misconduct can be raised at the state proceeding and no prejudice other than the "cost, anxiety, and inconvenience" of defending against that prosecution is shown.

Accordingly, plaintiff's request for declaratory and injunctive relief is denied and defendant's motion to dismiss the complaint for failure to state a claim upon which relief can be granted is granted. The Clerk of the court is directed to prepare ^{a judgment} ~~an order~~ dismissing the complaint.

U. S. D. J.

reiterated the fear expressed in Samuels that declaratory relief has virtually the same impact as an injunction. The decision, both majority opinion and dissent, contains excellent commentary upon the state of the law in this difficult area.

Assuming the truth of the facts alleged by plaintiff for the purposes of this motion, it must be determined whether these facts warrant federal intrusion in light of the strong policy against it. It is clear from a reading of Younger, Samuels, and their progeny that traditional equitable principles are to be applied in deciding whether a federal court ought to interfere with pending state prosecutions either by way of an injunction or a declaratory judgment. This involves examining the severity of the prejudice to plaintiff if the prosecution is allowed to continue as well as scrutinizing the conduct complained of. Plaintiff affirms that the expense of defending himself in the state action has forced him to go deeply into debt. The Court in Younger, however, made it clear that the cost, anxiety, and inconvenience of defending against a prosecution cannot "by themselves" be considered 'irreparable' in the special legal sense of

that term." 401 U.S. at 46. No allegation of harm comparable to that which the plaintiff suffered in Dombrowski v. Pfister, 380 U.S. 479 (1965) has been made.

Relying on United States v. Archer, 486 F.2d 670, 674-75 (2d Cir. 1973) and United States v. Toscanino, 500 F.2d 267 (2d Cir. 1974), plaintiff contends that defendant's conduct is violative of his due process rights. This court reiterates its comment in its August 8, 1974 memorandum that investigatory methods should never undermine the integrity of the judicial process. See also Rochin v. California, 342 U.S. 165 (1952) and United States v. Russell, 411 U.S. 423, 431 (1973). It should be noted, however, that Archer and Toscanino were not decided in the context presented here, i.e., where a federal court is asked to interfere with a pending state prosecution. Plaintiff has a forum where he can assert these due process violations. If for some reason the state courts fail to protect his constitutional rights, resort may be had to federal relief under the habeas corpus statute, 28 U.S.C. § 2254.

Reviewing the facts as alleged in conjunction

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ DEC 13 1974 ★

-----x
WILLIAM STEINMAN

TIME A.M.
P.M.

v.

MAURICE H. NADJARI, individually
and as Special Deputy Attorney
General of the State of New York

JUDGMENT

74 C 898

M' FILMED

-----x
A memorandum and order of the Honorable Mark A. Costantino, United States District Judge, having been filed on December 6, 1974, denying the plaintiff's request for declaratory and injunctive relief, and granting the defendant's motion to dismiss the complaint for failure to state a claim upon which relief can be granted, and

The Court having filed an amended memorandum and order on December 10, 1974, directing the Clerk to enter judgment dismissing the complaint, it is

ORDERED and ADJUDGED that the plaintiff's request for declaratory and injunctive relief is denied and the defendant's motion to dismiss the complaint is granted and that judgment is entered that the complaint is dismissed.

Dated: Brooklyn, New York
December 12, 1974

Lucas Angel
Clerk

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ DEC 10 1974 ★

TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
WILLIAM STEINMAN :

v. :

MAURICE H. NADJARI, individually :
and as Special Deputy Attorney :
General of the State of New York :

-----x
COSTANTINO, D.J.

M'FILED

74-C-898

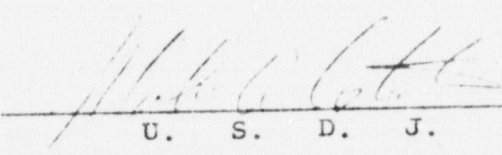
AMENDED MEMORANDUM
and ORDER

DEC 10 1974

The concluding paragraph on page 9 of the Memorandum and Order filed December 6, 1974 is amended to read as follows:

Accordingly, plaintiff's request for declaratory and injunctive relief is denied and defendant's motion to dismiss the complaint for failure to state a claim upon which relief can be granted is granted. The Clerk of the court is directed to prepare a judgment dismissing the complaint.

So Ordered.



U. S. D. J.

107

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

WILLIAM STEINMAN,

Plaintiff,

-against-

MATRICE H. NADJARI, individually and
as Special Deputy Attorney General of
the State of New York.

Defendant.

NOTICE OF APPEAL

Docket 74-C-898

NOTICE IS HEREBY GIVEN that the Plaintiff above-named, WILLIAM STEINMAN, hereby appeals to the United States Court of Appeals for the Second Circuit, from the judgment made and entered herein on the 13th day of December, 1974, by Honorable Mark A. Costantino, United States District Judge for the Eastern District of New York, dismissing the Plaintiff's action for a Declaratory Judgment and for injunctive relief, and granting defendant's motion to dismiss the complaint, and denying Plaintiff's request for declaratory and injunctive relief, and from each and every intermediate order pertaining thereto.

Dated: Brooklyn, New York
December 20, 1974

TO: MAURICE H. NADJARI,
Special Deputy Attorney General
2 World Trade Center
New York, N.Y.

CLERK OF THE COURT.

HERVEY & LEGUM
Attorneys for Plaintiff,
Office & PO Address,
16 Court Street,
Brooklyn, New York 11241

by AARON NOBBERAUM
of counsel

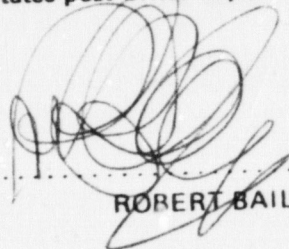
STATE OF NEW YORK)
: SS:
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 10 day of Feb. 1974 deponent served the within *Appendix* upon *Maurice Madigan*
Madigan

attorney(s) for *Appellee*

in this action, at *2 World Trade Center*
NYC 10047

the address designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.


ROBERT BAILEY

Sworn to before me, this

10 day of *Feb* 1975

William Bailey
WILLIAM BAILEY

Notary Public, State of New York

No. 43-0132945

Qualified in Richmond County

Commission Expires March 30, 1976